

JS 44 - No. CALIF (Rev. 4/97)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO)

I.(a) PLAINTIFFS

Michael Weber, et al.

See attached list for additional Plaintiffs

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)**

San Francisco

DEFENDANTS

California Department of Justice, Bill Lockyer,
Attorney General of California, et al.
See attached list for additional Defendants

**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)**

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

See Attached List

ATTORNEYS (IF KNOWN)**II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)**

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

(For diversity cases only)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault Libel & Slander ☐ 330 Federal Employers Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury	PERSONAL INJURY ☐ 362 Personal Injury Med Malpractice ☐ 365 Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth In Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 RR & Truck ☐ 650 Airline Regs ☐ 660 Occupational Safety/Health ☐ 680 Other	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce/ICC Rates/etc. ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 881 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing ☐ 444 Welfare ☐ 440 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motion to Vacate Sentence Habeas Corpus: ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition	LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt Relations ☐ 730 Labor/Mgmt Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl.Ret. Inc. Security Act	SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (US Plaintiff or Defendant) ☐ 871 IRS - Third Party 26 USC 7609	☐ 890 Other Statutory Actions

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY) 42 U.S.C. s. 1983. Proposition 69 violates the Fourth and Fourteenth Amendments to the United States Constitution.

VII. REQUESTED IN COMPLAINT:☒ CHECK IF THIS IS A CLASS ACTION

DEMAND \$ Preliminary

☐ CHECK YES only if demanded in complaint:

UNDER F.R.C.P. 23

and permanent injunction.

JURY DEMAND: ☐ YES ☐ NO**VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".****IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AN "X" IN ONE BOX ONLY)** ☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSEDATE Dec. 7, 2004 SIGNATURE OF ATTORNEY OF RECORD

PLAINTIFFS LIST

MICHAEL WEBER

MARY PRUITT

RODNEY WARE

RACHEL DELUCCI-YOUNGBERG

JAMES BLAIR

THINH T. LAM

RUBEN RIVAS

JASON CRAIG

LINDA WALKER

ALL OF US OR NONE

AMERICANS FOR SAFE ACCESS

DEFENDANTS LIST

BILL LOCKYER, Attorney General of
California

EVA STEINBERGER, Assistant Bureau Chief
for DNA Programs, California Department of
Justice

LANCE GIMA, Chief of the Bureau of
Forensic Services, California Department of
Justice Laboratory

CHARLES C. PLUMMER, Sheriff, Alameda
County

WARREN E. RUPF, Sheriff, Contra Costa
County

LOU BLANAS, Sheriff, Sacramento County

JIM POPE, Sheriff, Shasta County

MICHAEL HENNESSEY, Sheriff, San
Francisco County

ALBERT NAJERA, Chief of Police, City of
Sacramento

KEN JAMES, Chief of Police, City of
Emeryville

HEATHER J. FONG, Chief of Police, City of
San Francisco

PLAINTIFFS' ATTORNEY LIST

SONYA D. WINNER, SBN 200348
DONALD W. BROWN, SBN 83347
KATE S. STEINHEIMER, SBN 226220
COVINGTON & BURLING
One Front Street
San Francisco, California 94111
Telephone: (415) 591-6000
Facsimile: (415) 591-6091

JULIA HARUMI MASS, SBN 189649
MARGARET C. CROSBY, SBN 56812
MAYA L. HARRIS, SBN 172115
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF
NORTHERN CALIFORNIA, INC
NORTHERN CALIFORNIA, INC.
1663 Mission Street, Suite 460
San Francisco, CA 94103
Telephone: (415) 621-2493
Facsimile: (415) 255-8437

PETER ELIASBERG, SBN 189110
RICARDO D. GARCIA, SBN 178111
ACLU FOUNDATION OF SOUTHERN
CALIFORNIA
1616 Beverly Boulevard
Los Angeles, CA 90026
Telephone: (213) 977-9500
Facsimile: (213) 250-3919

JORDAN BUDD, SBN 144288
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SAN DIEGO AND
IMPERIAL COUNTIES
P.O. Box 87131
San Diego, California 92138
Telephone: (619) 232-2121
Facsimile: (619) 232-0036

JEFFREY D. SCHWARTZ, SBN 80643
360 Ritch Street, #201
San Francisco, CA 94107
Telephone: (415) 777-3170
Facsimile: (415) 681-8643

Attorney for Plaintiff
Rachel Delucci-Youngberg

ORIGINAL
FILED
04 DEC -7 AM 9:25
RECEIVED BY CLERK
U.S. DISTRICT COURT
SAN FRANCISCO, CALIFORNIA

SONYA D. WINNER, SBN 200348
DONALD W. BROWN, SBN 83347
KATE S. STEINHEIMER, SBN 226220
COVINGTON & BURLING
One Front Street
San Francisco, California 94111
Telephone: (415) 591-6000
Facsimile: (415) 591-6091

JULIA HARUMI MASS, SBN 189649
MARGARET C. CROSBY, SBN 56812
MAYA L. HARRIS, SBN 172115
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF
NORTHERN CALIFORNIA, INC.
1663 Mission Street, Suite 460
San Francisco, CA 94103
Telephone: (415) 621-2493
Facsimile: (415) 255-8437

E-filing

Attorneys for Plaintiffs

[additional counsel on signature page]

BZ

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

C 04 5161
Civil Case No.:

MICHAEL WEBER, MARY PRUITT, RODNEY
WARE, RACHEL DELUCCI-YOUNGBERG,
JAMES BLAIR, THINH T. LAM, RUBEN
RIVAS, JASON CRAIG, LINDA WALKER, ALL
OF US OR NONE, and AMERICANS FOR SAFE
ACCESS,

Plaintiffs,

v.

BILL LOCKYER, Attorney General of California;
EVA STEINBERGER, Assistant Bureau Chief for
DNA Programs, California Department of Justice;
LANCE GIMA, Chief of the Bureau of Forensic
Services, California Department of Justice
Laboratory; CHARLES C. PLUMMER, Sheriff,
Alameda County; WARREN E. RUPF, Sheriff,
Contra Costa County; LOU BLANAS, Sheriff,
Sacramento County; JIM POPE, Sheriff, Shasta
County; MICHAEL HENNESSEY, Sheriff, San
Francisco County; ALBERT NAJERA, Chief of
Police, City of Sacramento; KEN JAMES, Chief of
Police, City of Emeryville, and HEATHER J.
FONG, Chief of Police, City of San Francisco,

Defendants.

**CLASS ACTION COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

CLASS ACTION

1 Plaintiffs, for their Complaint in this action, allege and aver as follows:

2 **Introduction**

3 1. This is an action for declaratory and injunctive relief arising out of plaintiffs'
4 challenge, on behalf of themselves and classes of others who are similarly situated, to the
5 California DNA Fingerprint, Unsolved Crime and Innocence Protection Act (referred to herein
6 as "Proposition 69"). Proposition 69 mandates compulsory extraction, collection, analysis,
7 storage, and dissemination for law enforcement purposes of the DNA of hundreds of thousands
8 of California residents who have not been, and in many cases never will be, convicted of any
9 crime. Compulsory testing is also required of persons who, although previously convicted of
10 felony offenses, have long since served their debt to society and are no longer subject to the
11 supervision of the criminal justice system. Such compulsory sampling and testing, which is to
12 take place without any showing of probable cause or reasonable individualized suspicion,
13 violates plaintiffs' rights under the Fourth and Fourteenth Amendments to the United States
14 Constitution.

15 2. In the general election of November 2, 2004, a majority of California voters
16 approved a ballot measure enacting Proposition 69. Proposition 69 has amended the California
17 Penal Code, Sections 295 *et seq.*, to expand dramatically the scope of mandatory, suspicionless,
18 and warrantless sampling and testing of the DNA of persons in the State of California, and to
19 provide for broad sharing of data about those persons' DNA with law enforcement personnel
20 throughout the United States and internationally. As a result of Proposition 69, California now
21 has the most draconian program for the collection, retention, and sharing of DNA data in
22 existence anywhere in the United States.

23 3. Proposition 69 mandates DNA testing of all persons who are (or have ever
24 been) arrested for or charged with any felony. The arrest need not even be a lawful one, and
25 there is no requirement of a probable cause hearing or other steps toward prosecution, much less
26 any actual conviction, before the DNA sample is collected. Nor is there any requirement of
27 reasonable individualized suspicion implicating the DNA of a particular arrestee or other
28

1 specific justification for the testing of that individual; instead, the testing is across-the-board and
2 automatic for all felony arrestees.

3 4. Thus, Proposition 69 mandates the seizure and broad publication to local,
4 state, and national law enforcement agencies of DNA profiles from large numbers of persons as
5 to whom the state has no more legitimate interest in such information than it has for any other
6 law-abiding member of the public. The compulsory testing requirement applies to persons
7 arrested – but not even convicted – of many offenses for which their DNA has no conceivable
8 relevance, such as (to offer but a few examples) the use of unauthorized signatures in a
9 campaign advertisement, writing checks with insufficient funds, accepting a bribe to throw a
10 sporting event, racing a horse under a fictitious name, or counterfeiting railroad tickets. *See*
11 Cal. Penal Code §§ 115.1, 337c, 337f, 476(c), 481. Others caught in the DNA dragnet
12 established by the initiative include:

- 13 • persons who are arrested for a felony but against whom charges are quickly
14 dropped in the recognition that they are innocent and that no probable cause
15 existed for the arrest in the first place;
- 16 • persons for whom arrest warrants are issued as a result of mistaken identity,
17 including victims of identity theft;
- 18 • persons, such as victims of domestic violence, who are arrested for violence
19 committed in self-defense and who either have the charges against them
20 dropped or are subsequently acquitted;
- 21 • participants in political demonstrations and other activities who have
22 committed no crime but are nonetheless arrested in connection with broad
23 sweeps of participants by the police;
- 24 • persons who are wrongfully arrested due to police misconduct;
- 25 • persons who are arrested for felony possession of marijuana but against
26 whom charges are dropped or dismissed upon a showing that they were in
27 lawful possession of the marijuana for medical purposes;
- 28

- persons who are subject to overcharging upon their initial arrest for minor offenses and are hence charged with felonies but are ultimately convicted of nothing more than misdemeanors;
- persons who have been arrested for felony drug offenses and who, following successful completion of treatment programs, have had their convictions expunged in compliance with Proposition 36 or other state laws; and
- persons who were convicted of nonviolent felony offenses many years ago, who served their sentences, and who have since then lived law-abiding lives as ordinary members of the community.

Overall, approximately a third of all persons arrested for felony offenses in California in any given year are ultimately never convicted of any crime whatever. Many others are convicted of nothing more than a misdemeanor.

5. Under Proposition 69, a person whose DNA is taken but is subsequently not charged (or is acquitted) may later petition for expungement of his or her DNA profile from the state's database, but the ruling on any such petition is automatically delayed until after the data will likely already have been made broadly available to other state, national, and international databases over a substantial period of time. Even then, any expungement petition is subject to cumbersome and onerous procedural barriers, including what is effectively a right of veto by the prosecuting attorney and the unfettered and unreviewable discretion of the trial court to whom the petition is directed.

6. The expansive mandatory DNA testing program established by Proposition 69 violates the Fourth and Fourteenth Amendments of the United States Constitution. The statute not only permits, but *requires* broad and ongoing violations of the fundamental protections afforded all persons by the Constitution to be secure in their persons from unreasonable searches and seizures and to due process of law. Ignoring the clear limitations recognized by the courts in upholding carefully circumscribed DNA testing programs for persons who have been actually convicted of felony offenses, and as to whom there are specifically articulated justifications for this invasion of fundamental privacy interests, the new

California law reaches broadly to mandate testing of hundreds of thousands of people who are legally presumed to be (and in a large proportion of cases actually are) innocent of any crime at all. No justification has been identified for this program beyond the generalized law enforcement interest in solving unrelated crimes. But the Constitution permits this kind of law enforcement interest to be pursued only in the presence of reasonable individualized suspicion and (absent unusual circumstances) issuance of a warrant on probable cause. The new statutory provisions adopted through Proposition 69 are accordingly unconstitutional.

7. This action is brought on behalf of persons who are subject to compulsory DNA testing solely as a result of Proposition 69 and who either have not been convicted of any felony or, if they have been convicted in the past, have completed their sentences and/or probation and are no longer subject to the supervision of the criminal justice system. Plaintiffs do not in this action challenge Proposition 69 insofar as it merely expands the extent to which compulsory DNA testing is applied to persons who are actually convicted of a felony offense and remain (or, as a result of a future conviction, become) subject to the supervision of the criminal justice system. Nor do plaintiffs challenge the lawful collection and analysis of DNA samples pursuant to a valid warrant or other court order requiring DNA testing in connection with a specific criminal investigation or proceeding as to which the requisite probable cause is shown connecting the person to be tested with a particular criminal offense. Rather, this action addresses the mass, programmatic DNA testing of hundreds of thousands of persons – persons not yet convicted and persons no longer under the supervision of the criminal justice system – as to whom the long-recognized Constitutional prerequisites to such searches and seizures have not been established.

JURISDICTION AND VENUE

8. This action arises under 42 U.S.C. § 1983 and the United States Constitution. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

9. The defendants are all public officials of the State of California or its constituent counties and municipalities and are sued here in their official capacities. Each of the

1 defendants resides within this District and/or performs official duties within the State of
2 California. This Court accordingly has personal jurisdiction over each of the defendants.

3 10. Venue properly lies within this District pursuant to 28 U.S.C. § 1391(b). The
4 named defendants perform their official duties in whole or in part in this District, and a
5 substantial part of the events or omissions giving rise to plaintiffs' claims have occurred or will
6 occur in this District.

7 INTRADISTRICT ASSIGNMENT

8 11. Pursuant to Local Rule 3-2, this action may properly be assigned to the San
9 Francisco or Oakland divisions of this Court.

10 THE PARTIES

11 Plaintiffs

12 12. Plaintiff Michael Weber is a resident of San Francisco, California. On
13 November 3, 2004, he attended an anti-war demonstration in San Francisco. Some time after a
14 bottle was thrown from the crowd of protestors in which Weber was standing, the police began
15 arresting everyone in the crowd. Weber was arrested for felony assault with a deadly weapon
16 other than a firearm on a police officer. Weber had not himself thrown the bottle or otherwise
17 assaulted or attempted to assault any officers at the demonstration. A few days later, the felony
18 charge was reduced to two misdemeanor charges, which were thereafter dismissed entirely.
19 Although Proposition 69 does not require Weber's DNA sample to be physically collected until
20 2009, the requirement for such sampling is now firmly established by statute and is subject to no
21 future contingencies or factual developments. His objection to such sampling is accordingly
22 ripe for resolution by this Court.

23 13. Plaintiff Mary Pruitt is a resident of Sacramento County, California. On
24 October 15, 2001, she was arrested in Sacramento, California, for possession of
25 methamphetamine and drug paraphernalia and subsequently pleaded guilty to those charges in
26 order to obtain a diversion to drug treatment in accordance with the California Substance Abuse
27 and Crime Prevention Act of 2000. Pruitt thereafter completed the required drug treatment
28 program, and the charges against her were dismissed pursuant to Cal. Penal Code

1 § 1210.1(d)(1). Pruitt is no longer under any supervision by the criminal justice system;
2 Proposition 69 nonetheless requires that Pruitt's DNA be collected and that the data concerning
3 her DNA be included in the California DNA database. Although Proposition 69 may not
4 require Pruitt's DNA sample to be collected until 2009, the requirement for such sampling is
5 now firmly established by statute and is subject to no future contingencies or factual
6 developments. Her objection to such sampling is hence ripe for adjudication by this Court.

7 14. Plaintiff Rodney Ware is a resident of Sacramento County, California, who
8 has been a victim of a crime commonly referred to as "identity theft." In April 2004, he was
9 arrested in Los Angeles on a felony warrant. Because the person for whom the warrant was
10 issued had used Ware's name under false pretences, the warrant was ultimately found not to
11 pertain to Ware; accordingly, the charges were not pursued. Nonetheless, because he has been
12 arrested for a felony, Proposition 69 requires that Ware's DNA be sampled and analyzed and
13 that data concerning his DNA be included in the California DNA Database. Although
14 Proposition 69 does not require Ware's DNA sample to be physically collected until 2009, the
15 requirement for such sampling is now firmly established by statute and is subject to no future
16 contingencies or factual developments. His objection to such sampling is accordingly ripe for
17 resolution by this Court.

18 15. Plaintiff Rachel Delucci-Youngberg is a resident of Shasta County,
19 California. In July 2001, she was arrested for and charged with murder in Shasta County,
20 California, after she shot her abusive husband in self-defense. At trial, after hearing all evidence
21 from both the prosecution and defense, the trial judge granted a motion for acquittal under Cal.
22 Penal Code § 1118.1, ruling that the prosecution had not presented substantial evidence to
23 disprove the defense theory of self-defense. Nonetheless, because she was arrested for a
24 felony, Proposition 69 requires that Delucci-Youngberg's DNA be collected and analyzed and
25 that data concerning her DNA be included in the California DNA Database.

26 16. Plaintiff James Blair is a resident of Alameda County, California. In
27 December 2003 and January 2004, he was arrested in Emeryville and Berkeley, California for
28 offenses related to his possession and cultivation of marijuana and charged with felony

1 violations of California Health and Safety Code §§ 11359 and 11358. The charges were
2 dismissed after Blair's physician appeared in court and confirmed that Blair's possession,
3 cultivation, and use of marijuana were pursuant to the physician's recommendation to treat pain
4 and muscle spasms related to a spinal cord injury and that therefore Blair had a valid defense
5 under the California Compassionate Use Act, Cal. Health and Safety Code § 11362.5.
6 Nonetheless, because he was arrested for a felony, Proposition 69 requires that Blair's DNA be
7 collected and analyzed and that data concerning his DNA be included in the California DNA
8 Database. Although Proposition 69 does not require Blair's DNA sample to be physically
9 collected until 2009, the requirement for such sampling is now firmly established by statute and
10 is subject to no future contingencies or factual developments. His objection to such sampling is
11 accordingly ripe for resolution by this Court. Blair is a member of plaintiff Americans for Safe
12 Access.

13 17. Plaintiff Thinh T. Lam is a resident of Orange County, California. He was
14 arrested on April 29, 2003, for murder. Those charges are currently pending, and he is currently
15 incarcerated in San Francisco awaiting trial. Lam has never been convicted of a felony or any
16 other criminal offense. Nonetheless, because he has been arrested for murder, Proposition 69
17 requires that Lam's DNA be sampled and analyzed and that data concerning his DNA be
18 included in the California DNA Database.

19 18. Plaintiff Ruben Rivas is a resident of Orange County, California. In 2000,
20 while serving as a volunteer legal observer for the National Lawyers Guild during the
21 Democratic National Convention in Los Angeles, he followed and videotaped a demonstration
22 by animal rights activists. After some of the activists began pounding on the gate of a store,
23 police officers arrived and arrested everyone who was present, including Rivas, charging them
24 with felony conspiracy to commit burglary. The charges against Rivas were dropped the next
25 day. Nonetheless, because he was arrested for a felony, Proposition 69 requires that Rivas's
26 DNA be collected and analyzed and that data concerning his DNA be included in the California
27 DNA Database. Although Proposition 69 does not require Rivas's DNA sample to be
28 physically collected until 2009, the requirement for such sampling is now firmly established by

1 statute and is subject to no future contingencies or factual developments. His objection to such
2 sampling is accordingly ripe for resolution by this Court.

3 19. Plaintiff Jason Craig is a resident of San Diego, California, and a student in
4 his senior year at San Diego State University. In February 2004, following a fraternity party at
5 which he became intoxicated, Craig was out with two friends and accompanied one of them into
6 an unlocked residence that the friend claimed was the home of an acquaintance who had
7 borrowed some video game equipment and magazines from him. The friend took the
8 equipment, which he claimed to own. Once outside, Craig agreed to carry the wires from the
9 game system. As they were walking down the street, a police officer stopped the group and then
10 arrested them. Craig was charged with the felony offense of burglary. He was subsequently
11 convicted only of a misdemeanor offense of receiving stolen property. Craig has no other
12 criminal record. Nonetheless, because he was arrested for a felony, Proposition 69 requires that
13 Craig's DNA be collected and analyzed and that data concerning his DNA be included in the
14 California DNA Database. Although Proposition 69 does not require Craig's DNA sample to be
15 physically collected until 2009, the requirement for such sampling is now firmly established by
16 statute and is subject to no future contingencies or factual developments. His objection to such
17 sampling is accordingly ripe for resolution by this Court.

18 20. Plaintiff Linda Walker is a resident of Contra Costa County, California.
19 Between about 1983 and 1993, Walker was arrested for and convicted of a number of felony
20 offenses, primarily related to petty theft and drug possession. Following those convictions,
21 Walker completed her sentences and was released and completed periods of probation and
22 parole. Walker is no longer subject to any kind of probation or other supervised release relating
23 to her arrest and conviction; nor has she been arrested for any other criminal offense since that
24 time. Nonetheless, Proposition 69 requires that Walker's DNA be sampled and that data
25 concerning her DNA be included in the California DNA Database. Walker is a member of
26 plaintiff All of Us or None.

27 21. As of the date of this Complaint, none of the individual plaintiffs in this
28 action has provided a DNA sample pursuant to Proposition 69; nor, with the exception of

1 plaintiff Lam, is any plaintiff's DNA profile in the possession of state or federal law
2 enforcement authorities or in any database to which such authorities have access. Lam has been
3 required to provide a biological sample for testing, but the court order requiring that sample
4 expressly provides that it may not be used in association with any other case and may not be
5 included in any city, state, or national database or databank.

6 22. Except for Plaintiffs Pruitt and Walker, none of the individual plaintiffs in
7 this action has ever been convicted of any felony, either in California or elsewhere. Except for
8 plaintiff Lam, who is incarcerated pending trial, none of the plaintiffs is currently incarcerated
9 or subject to any form of supervised release following incarceration. Upon information and
10 belief, none of the plaintiffs, other than Lam, is currently the subject of a valid warrant or court
11 order for the sampling of his or her DNA based upon a finding of probable cause or any
12 reasonable suspicion linking him or her to any crime for which such DNA would be relevant
13 evidence. Nor does any other ground currently exist (apart from Proposition 69) on which any
14 plaintiff may be compelled to submit a sample of his or her DNA for testing and use for law
15 enforcement purposes.

16 23. Plaintiff All of Us or None is an unincorporated association whose primary
17 purpose is to eliminate stigma, shame, and barriers to full participation in society resulting from
18 felony convictions and former incarceration. All of Us or None's membership includes many
19 individuals within California who have served criminal sentences for felonies and are no longer
20 under the supervision of the criminal justice system but are nevertheless subject to the new
21 mandatory testing provisions of Proposition 69. Implementation of Proposition 69 will have an
22 immediate and severe impact on the constitutional rights of its members.

23 24. Plaintiff Americans for Safe Access is a non-profit corporation that has as its
24 primary purpose working to protect the rights of patients and doctors legally to use marijuana
25 for medical purposes, including providing legal advocacy and training for patients and doctors
26 who are criminally charged for offenses related to medical marijuana. Americans for Safe
27 Access's members and constituents include individuals within California who are subject to the
28 new mandatory testing provisions of Proposition 69 due to arrests for offenses to which they

1 have an affirmative defense under California law in the legal use of marijuana for medical
2 purposes. Implementation of Proposition 69 will have a severe impact on the constitutional
3 rights of the members and constituents of Americans for Safe Access.

4 **Defendants**

5 25. Defendant Bill Lockyer is the Attorney General of the State of California.
6 Under Article 5, Section 13 of the California State Constitution, he is the "chief law officer of
7 the State" and has the duty "to see that the laws of the state are uniformly and adequately
8 enforced." The California Constitution further grants him "direct supervision over every district
9 attorney and sheriff and over such other law enforcement officers as may be designated by
10 law..." As Attorney General, defendant Lockyer also supervises the operations of the
11 California Department of Justice, which is directly responsible for implementing key provisions
12 of Proposition 69. He is sued in his official capacity.

13 26. Defendant Eva Steinberger is the Assistant Bureau Chief for DNA Programs,
14 California Department of Justice. In that capacity, she has responsibility for supervising
15 functions of the Department of Justice and the California Department of Justice Laboratory in
16 implementing Proposition 69, including, *inter alia*, providing procedural guidance, equipment,
17 and materials to local law enforcement agencies for the collection of samples; receiving,
18 maintaining, storing, and analyzing samples; contracting with third parties to assist with DNA
19 analysis; and maintaining databases and databanks of analysis results and other information.
20 She is sued in her official capacity.

21 27. Defendant Lance Gima is the Chief of the Bureau of Forensic Services,
22 California Department of Justice Laboratory. In that capacity, he has responsibility for
23 supervising functions of the Department of Justice Laboratory in implementing Proposition 69,
24 including, *inter alia*, providing guidance, equipment, and materials to local law enforcement
25 agencies for the collection of samples; receiving, maintaining, storing, and analyzing samples;
26 contracting with third parties to assist with DNA analysis; and maintaining databases and
27 databanks of analysis results and other information. He is sued in his official capacity.
28

1 28. Defendant Charles C. Plummer is the Sheriff of Alameda County.
2 Proposition 69 vests in this defendant, and the other law enforcement officers of Alameda
3 County whom he supervises, the responsibility for collection of DNA samples from arrestees.
4 He is sued in his official capacity.

5 29. Defendant Warren E. Rupf is the Sheriff of Contra Costa County.
6 Proposition 69 vests in this defendant, and the other law enforcement officers of Contra Costa
7 County whom he supervises, the responsibility for collection of DNA samples from arrestees.
8 He is sued in his official capacity.

9 30. Defendant Lou Blanas is the Sheriff of Sacramento County. Proposition 69
10 vests in this defendant, and the other law enforcement officers of Sacramento County whom he
11 supervises, the responsibility for collection of DNA samples from arrestees. He is sued in his
12 official capacity.

13 31. Defendant Jim Pope is the Sheriff of Shasta County. Proposition 69 vests in
14 this defendant, and the other law enforcement officers of Shasta County whom he supervises,
15 the responsibility for collection of DNA samples from arrestees. He is sued in his official
16 capacity.

17 32. Defendant Michael Hennessey is the Sheriff of San Francisco County.
18 Proposition 69 vests in this defendant, and the other law enforcement officers of San Francisco
19 County whom he supervises, the responsibility for collection of DNA samples from arrestees.
20 He is sued in his official capacity.

21 33. Defendant Albert Najera is the Chief of Police for the City of Sacramento.
22 Proposition 69 vests in this defendant, and the other law enforcement officers of Sacramento
23 whom he supervises, the responsibility for collection of DNA samples from arrestees. He is
24 sued in his official capacity.

25 34. Defendant Ken James is the Chief of Police for the City of Emeryville.
26 Proposition 69 vests in this defendant, and the other law enforcement officers of Emeryville
27 whom he supervises, the responsibility for collection of DNA samples from arrestees. He is
28 sued in his official capacity

35. Defendant Heather J. Fong is the Chief of Police of the City of San Francisco. Proposition 69 vests in this defendant, and the other law enforcement officers of San Francisco whom she supervises, the responsibility for collection of DNA samples from arrestees. She is sued in her official capacity.

CLASS ACTION ALLEGATIONS

36. Plaintiffs bring this action as a class action pursuant to Fed. R. Civ. P. 23(b) on their own behalf and on behalf of all other persons similarly situated. This action is brought on behalf of two classes, which may be defined as follows:

a. Plaintiffs Weber, Blair, Rivas, Ware, Craig, and Lam bring this action on their own behalf and as representatives of an "Arrestee Class," which is defined as:

All persons who are, or will be, compelled to submit to the involuntary collection of their DNA under Sections 295 *et seq.* of the California Penal Code solely by reason of the fact that they have been arrested for, or charged with, a felony offense.

b. Plaintiff Walker brings this action on her own behalf and on behalf of a "Formerly Convicted Persons Class," which may be defined as:

All persons who have previously been convicted of a felony offense in California and are no longer subject to any supervision of the criminal justice system, but who are nonetheless, by reason of that prior conviction, required to submit to the involuntary collection of their DNA under Sections 295 *et seq.* of the California Penal Code.

37. Both of the classes defined in the foregoing paragraph are so numerous that joinder is impracticable.

38. Questions of law and fact common to the members of the plaintiff classes predominate in this case. These common questions include:

a. Do the compulsory sampling and analysis of the DNA of members of the plaintiff classes pursuant to the requirements of Proposition 69 constitute an unreasonable search and seizure in violation of the Fourth and Fourteenth Amendments to the United States Constitution?

b. Do the compulsory sampling and analysis of the DNA of members of the plaintiff classes, and the dissemination of DNA profiles and other information derived from

1 those samples, pursuant to Proposition 69 constitute an excessive government intrusion into
2 their private and personal genetic information in that it is neither supported by a legitimate state
3 purpose outweighing plaintiffs' privacy interests nor narrowly tailored to meet any legitimate
4 state purpose, thus violating plaintiffs' right to privacy under the Fourteenth Amendment of the
5 United States Constitution?

6 c. Do the compulsory sampling and analysis of the DNA of members of the
7 plaintiff classes pursuant to the requirements of Proposition 69, without a requirement of any
8 pre-testing due process protections or the mandatory expungement of data and samples from
9 persons against whom charges are dropped, who are acquitted, whose convictions are reversed,
10 or who are otherwise adjudicated to be innocent, violate the Due Process Clause of the
11 Fourteenth Amendment to the United States Constitution?

12 39. The claims of the named plaintiffs are typical of the claims of members of the
13 classes whom they represent.

14 40. The named plaintiffs will fairly and adequately protect the interests of the
15 plaintiff classes. The named plaintiffs have no interest that is now or may be potentially
16 antagonistic to the interests of the class. The attorneys representing the plaintiffs include
17 experienced civil rights attorneys and are considered able practitioners in federal constitutional
18 and statutory adjudications.

19 41. Defendants have threatened to act and will continue to act on grounds
20 generally applicable to the plaintiff classes, thereby making final injunctive and declaratory
21 relief appropriate to the classes as a whole.

22 **THE MATTERS IN CONTROVERSY**

23 **The Development and Sharing of DNA Databases**

24 42. Before the passage of Proposition 69, California law provided for mandatory
25 DNA testing of persons who had been convicted of certain serious felony offenses and the
26 inclusion of data derived from those tests in a state-wide database. Only persons who had
27 actually been convicted of one of the enumerated felonies were subject to this compulsory
28 testing program, and even in those cases the law provided important due process protections to

1 those whose DNA was taken. For example, the pre-Proposition 69 California statute provided
2 for the automatic expungement of the physical DNA sample and associated database entries for
3 any person whose conviction was reversed.

4 43. California routinely shares DNA profiles and other information gathered
5 through its DNA testing programs with law enforcement agencies elsewhere. For example,
6 California participates in a nationwide program, supervised by the Federal Bureau of
7 Investigation, to share automatically the contents of the California DNA Database through the
8 nationwide Combined DNA Index System ("CODIS") database. The CODIS database currently
9 contains DNA information on more than 1.8 million individuals, including data derived from
10 state and federal DNA sampling programs. This data is widely available to law enforcement
11 agencies throughout the United States and is also made available to international law
12 enforcement agencies, such as Interpol, and the national law enforcement agencies of other
13 countries. Until recently, the federal authorizing legislation for the CODIS system permitted
14 only DNA data taken from persons actually convicted of a felony to be included in the system;
15 however, that legislation was recently amended to permit the inclusion of many arrestees as
16 well.

17 44. The sharing of DNA profiles and other information gathered through DNA
18 testing is not limited to the CODIS system. Law enforcement agencies in California are also
19 authorized to share DNA profiles and other information with one another, and with law
20 enforcement agencies in other states, through cross-references of individual state and local
21 databases.

22 45. The purpose of the collection and sharing of data in CODIS and other DNA
23 databases is to provide DNA profiles that can be used to match against DNA found in crime-
24 scene samples, in order to identify suspects in those crimes. The mandatory collection of DNA
25 from arrestees in California is intended to provide law enforcement with broad access to
26 otherwise unavailable information about those individuals that might link them to offenses other
27 than those for which they have been arrested.
28

46. The title and preamble of Proposition 69 imply that the collection and sharing of data through DNA databases assists in clearing criminal suspects and proving innocence. This is untrue. In fact, while DNA has proven to be an invaluable tool in exonerating persons accused of crime, such exoneration nearly always results from a comparison of the accused person's own DNA with samples from the crime scene. Persons seeking exoneration through this method are generally eager to volunteer their DNA for purposes of such a comparison. DNA databases, in contrast, represent sources of evidence used by law enforcement to identify new suspects from among the general population.

Proposition 69

47. Proposition 69, a copy of which is attached as Exhibit A hereto, was approved by the California electorate in the November 2, 2004 general election, in accordance with Article II, Section 8 of the California Constitution.

48. Proposition 69 amended Sections 295 *et seq.* of the California Penal Code. The amended statute includes several important new provisions that dramatically expand the reach of the state's mandatory testing regime, while at the same time eliminating key due process protections that had previously existed.

49. The declared purpose of the searches and seizures required by Proposition 69 is to further law enforcement goals. Thus, the initiative states that

“Law enforcement should be able to use the DNA Database and Data Bank Program to substantially reduce the number of unsolved crimes; to help stop serial crime by quickly comparing DNA profiles of qualifying persons and evidence samples with as many investigations and cases as necessary to solve crime and apprehend perpetrators; to exonerate persons wrongly suspected or accused of crime; and to identify human remains.”

Proposition 69 § II(c). Proposition 69 further asserts that expanded DNA testing is “[t]he most reasonable and certain means” of enhancing the law enforcement interests in identifying and apprehending criminal offenders. *Id.* §§ II(d)(1)-(4).

50. As amended by Proposition 69, California's DNA testing statute mandates the compulsory collection of DNA samples from all persons who are convicted or adjudicated guilty of any felony offense; such post-conviction sampling is no longer limited to persons who

1 are convicted of sex offenses and other serious and violent felonies. Further, a new provision of
2 the statute now requires DNA testing of “any adult person who is arrested for or charged with”
3 any felony offense of any kind. Persons arrested for (or charged with) murder, voluntary
4 manslaughter, or any offense under Section 290 of the Penal Code – or attempt to commit any
5 of those felonies – are immediately subject to compulsory DNA testing. For persons arrested
6 for all other felony offenses, compulsory testing is to take place beginning on January 1, 2009.

7 51. The initiative is expressly retroactive, requiring collection “regardless of
8 when the crime charged or committed became a qualifying offense pursuant to this chapter”
9 Proposition 69 § III(4)(b)(1). Thus, all persons who have *ever* been arrested for, or charged
10 with, murder, voluntary manslaughter, or Section 290 offenses (or attempts to commit those
11 felonies) are now required to have their DNA sampled and analyzed. All persons who have *ever*
12 been arrested for, or charged with, any other felonies will be required to submit to DNA testing
13 in 2009. For arrests occurring after enactment, sampling is to occur “immediately following
14 arrest, or during the booking or intake or reception center process or as soon as administratively
15 practicable after arrest, but, in any case, prior to release on bail or pending trial or any physical
16 release from confinement or custody.” *Id.* § III(4)(a)(1)(A). For anyone else whose DNA has
17 not yet been obtained, “the court shall order the person to report within five calendar days to a
18 county jail facility ... or other designated facility to provide the required specimens....” *Id.*
19 § III(4)(a)(1)(B). The initiative affords the courts no discretion in issuing such orders; nor are
20 there any stated exceptions (*e.g.*, adjudicated innocence) from this mandate.

21 52. Proposition 69 establishes a presumption that samples will be taken through
22 the “buccal swab” method, through which inner cheek cells are taken from scraping the inside
23 of the mouth. However, samples may be taken through other methods instead (*e.g.*, blood
24 sampling) at the direction of the California Department of Justice. *Id.* § III(1)(e). The
25 Department of Justice is directed to provide appropriate equipment, materials, and instructions
26 to each facility at which samples are to be taken. Once taken, the samples are to be forwarded
27 to the DNA Laboratory of the Department of Justice, which is to arrange for the DNA analysis
28 to be performed, either by its own personnel or through third-party contractors. After the

1 analysis is completed, the results are entered into the state's DNA Database and will be shared
2 freely with other law enforcement agencies nationally and internationally, including (but not
3 limited to) through the CODIS system.

4 53. Proposition 69 does not effectively limit the types of genetic information to
5 be collected and maintained from the biological sample and does not require destruction of the
6 underlying sample after the DNA analysis has taken place. Instead, the physical sample is
7 retained indefinitely for potential further analysis. Thus, Proposition 69 allows the state to
8 maintain *all* genetic information that can be derived from a person's DNA.

9 54. As amended by Proposition 69, California law no longer provides for the
10 automatic expungement of data and samples taken from persons whose convictions are
11 overturned; nor is there any provision for automatic expungement of samples taken from
12 persons against whom charges are dropped or who are acquitted or otherwise found to be
13 innocent of the offense for which they were arrested. Instead, such a person may file a petition
14 for such expungement in the court of the county where the arrest occurred. However, no such
15 petition may be granted unless the court is able to certify that neither the prosecuting attorney
16 nor the Department of Justice has objected to it; thus, the initiative allows the prosecuting
17 attorney and Department of Justice, or either of them, to block expungement merely by filing an
18 objection. Further, the initiative expressly provides that "[t]he court has the discretion to grant
19 or deny the request for expungement," and that "denial of a request for expungement is a
20 nonappealable order and shall not be reviewed by petition for writ." Thus, the court's ability to
21 deny such a petition is completely unfettered and unreviewable. Moreover, no expungement
22 petition may be granted until at least 180 days following the filing of the petition, and no limits
23 are imposed on the use of the petitioner's DNA data or dissemination of that data to other law
24 enforcement agencies during that 180-day period. And even if the petition for expungement is
25 granted, no mechanism is provided for the return of the petitioner's DNA sample, profile, or
26 other information from other law enforcement agencies with whom it has been shared.

27 55. Proposition 69 allows for the sharing of DNA profiles and/or the underlying
28 biological samples with a broad array of international, federal, state and local law enforcement

1 officers, including private crime laboratories and other third parties that have been approved by
2 the Department of Justice.

3 **The Nature Of DNA Testing And The Impact On Plaintiffs**

4 56. Under Proposition 69, the specimens that are taken from plaintiffs and others
5 will be processed to extract samples of their DNA, which are then analyzed to generate DNA
6 profiles. DNA (an abbreviation for “deoxyribonucleic acid”) is the cellular material that
7 contains each person’s unique genetic code.

8 57. The DNA profiles that are currently stored in law enforcement databases are
9 sometimes referred to as “DNA fingerprints.” This is a misnomer, for although fingerprints and
10 DNA resemble each other in that each is unique for each individual person, the seizure and
11 analysis of DNA samples differs fundamentally from the mere taking of a fingerprint.
12 Fingerprinting involves the creation of an image or impression of the external physical
13 conformation of the fingertips, and a fingerprint reveals nothing more about the person than the
14 unique patterns on the skin of his or her fingers. Thus, while fingerprints can be used
15 effectively to provide evidence of the identity of a person, they reveal no other information
16 about that person.

17 58. DNA, in contrast, is not directly displayed on the surface of the body; it is,
18 rather, a microscopic arrangement of chemical constituents within the nucleus of a human cell.
19 Once those chemical constituents are analyzed, they can reveal a vast array of highly private
20 information about that person, including, his or her relationship to other persons, ethnic traits
21 and other physical characteristics, genetic defects, and propensity to certain diseases, such as
22 certain types of cancers. The amount of information about a person that can be revealed by
23 DNA is expanding every year. Some scientists have suggested that DNA analysis can be used
24 to predict personality traits, propensity to antisocial behavior, and sexual orientation, as well as
25 an ever-expanding variety of existing and future health conditions and other physical traits.

26 59. Due to the expansive nature of the information available from DNA samples,
27 the compulsory seizure of such samples from plaintiffs provides law enforcement personnel and
28 other government officials with direct access to the most fundamentally private personal

1 information that any person possesses. Such sampling invades a location – the genetic code
2 locked within each person’s cells – in which, absent unusual circumstances, the average person
3 has the very highest possible expectation of privacy.

4 **Declaratory and Injunctive Relief Allegations**

5 60. An actual and substantial controversy exists between plaintiffs and
6 defendants as to their respective legal rights and duties. Plaintiffs contend that, as applied to
7 them and to others in the plaintiff classes, Proposition 69 is unlawful and unconstitutional.
8 Defendants contend the opposite.

9 61. If not enjoined by the Court, defendants will implement Proposition 69 in
10 derogation of the rights of plaintiffs and others in the plaintiff classes. Such implementation
11 will impose irreparable injury on the plaintiffs and other class members. Plaintiffs have no
12 plain, speedy, and adequate remedy at law.

13 **COUNT I: VIOLATION OF THE FOURTH AMENDMENT TO THE UNITED**
14 **STATES CONSTITUTION (42 U.S.C. § 1983)**

15 62. Plaintiffs hereby reallege and incorporate by reference the allegations
16 contained in Paragraphs 1 through 61 as though fully set forth herein.

17 63. The Fourth Amendment to the United States Constitution protects the right of
18 people to be free from unreasonable searches and seizures and prohibits searches or seizures for
19 law enforcement purposes absent reasonable individualized suspicion.

20 64. Proposition 69 mandates the compulsory extraction of biological samples
21 from plaintiffs and other members of the plaintiff classes, and the analysis of those samples for
22 generalized law enforcement purposes, without requiring any showing of probable cause or
23 individualized suspicion linking the person at issue to any specific crime for which his or her
24 DNA is relevant.

25 65. The compulsory and warrantless extraction of biological samples from
26 plaintiffs and members of the plaintiff classes is inherently “unreasonable” within the meaning
27 of the Fourth Amendment and is not supported by any recognized exception to the Fourth
28 Amendment’s warrant and probable cause requirements. The subsequent DNA analysis of those
samples also constitutes an unreasonable search within the meaning of the Fourth Amendment

1 and is also not justified by any recognized exception to the warrant and probable cause
2 requirements. As applied to the plaintiff classes, Proposition 69 is accordingly unconstitutional.

3 **COUNT II: VIOLATION OF SUBSTANTIVE DUE PROCESS UNDER THE**
4 **FOURTEENTH AMENDMENT TO THE CONSTITUTION (42 U.S.C. § 1983)**

5 66. Plaintiffs hereby reallege and incorporate by reference the allegations
6 contained in Paragraphs 1 through 65 as though fully set forth herein.

7 67. The Due Process Clause of the Fourteenth Amendment to the United States
8 Constitution provides a substantive right to privacy with respect to personal matters such as
9 medical and genetic information.

10 68. Because Proposition 69 requires government intrusion into private and
11 personal genetic information of plaintiffs by procuring, analyzing, indefinitely retaining and
12 disseminating their biological samples and DNA information, the Fourteenth Amendment to the
13 United States Constitution requires that the intrusion be supported by a legitimate governmental
14 purpose that outweighs plaintiffs' privacy interests and that the intrusion be narrowly tailored to
15 meet that legitimate purpose.

16 69. California's interest in maintaining biological samples and DNA profiles
17 from arrestees and persons no longer under supervision of the criminal justice system does not
18 outweigh plaintiffs' privacy interests with respect to their genetic material; nor is Proposition 69
19 narrowly tailored to further the state's interest. Application of Proposition 69 to plaintiffs and
20 other members of the plaintiff classes accordingly violates their rights to privacy and substantive
21 due process under the Fourteenth Amendment to the United States Constitution.

22 **COUNT III: VIOLATION OF PROCEDURAL DUE PROCESS UNDER THE**
23 **FOURTEENTH AMENDMENT TO THE CONSTITUTION (42 U.S.C. § 1983)**

24 70. Plaintiffs hereby reallege and incorporate by reference the allegations
25 contained in Paragraphs 1 through 69 as though fully set forth herein.

26 71. The Due Process Clause of the Fourteenth Amendment to the United States
27 Constitution prohibits the deprivation of life, liberty or property without due process of law.

28 72. Proposition 69 violates procedural process in numerous respects, including
the following:

1 a. Proposition 69 requires the deprivation of the arrestee plaintiffs' property
2 and liberty interests in their own genetic material without notice or any opportunity to be heard
3 as to whether the arrest giving rise to the compulsory collection of their biological samples was
4 lawful.

5 b. Proposition 69 denies plaintiffs any opportunity to be heard as to
6 whether any legitimate reason exists for the compulsory sampling and analysis of their DNA for
7 law enforcement purposes;

8 c. Proposition 69 denies plaintiffs meaningful remedies to assure complete,
9 certain, and immediate expungement of their samples, DNA profiles, and other data should their
10 arrests not lead to a felony conviction or if any conviction is overturned;

11 73. Because it fails to afford such basic procedural protections to plaintiffs and
12 other members of the plaintiff classes who are subject to its mandatory testing provisions,
13 Proposition 69 violates the Due Process Clause of the Fourteenth Amendment to the United
14 States Constitution.

15 **RELIEF SOUGHT**

16 WHEREFORE, Plaintiffs, on behalf of themselves and the plaintiff class, seek
17 the following relief:

18 1. A declaration that Proposition 69 is unconstitutional as applied to persons
19 who are subject to its compulsory sampling and testing provisions solely as a result of their
20 status as persons who have been arrested for or charged with a felony.

21 2. A declaration that Proposition 69 is unconstitutional as applied to persons
22 who are subject to its compulsory sampling and testing provisions solely by reason of their
23 status as persons who have been convicted of a felony, in those instances in which the formerly
24 convicted person is no longer incarcerated or otherwise subject to the continued supervision of
25 the criminal justice system.

26 3. A preliminary and permanent injunction:

27 a) enjoining defendants from the compulsory collection, DNA
28 analysis, and/or retention of biological samples from any member

1 of the Arrestee Class until and unless he or she is actually
2 convicted of a felony offense, unless such sampling is supported
3 by a warrant issued on probable cause;

4 b) enjoining defendants from the compulsory collection, DNA
5 analysis, and/or retention of biological samples from any member
6 of the Formerly Convicted Persons Class absent a warrant issued
7 on probable cause;

8 c) enjoining defendants from assisting any other state or local law
9 enforcement official or third party in collecting, analyzing, or
10 retaining biological samples, or DNA data obtained from such
11 samples, from any member of the Arrestee Class until and unless
12 he or she is actually convicted of a felony offense, unless such
13 sampling, analysis, and/or retention is supported by a warrant
14 issued on probable cause;

15 d) enjoining defendants from assisting any other state or local law
16 enforcement official in collecting, analyzing, or retaining
17 biological samples, or DNA data obtained from such samples,
18 from any member of the Formerly Convicted Persons Class,
19 unless such sampling, analysis, and/or retention is supported by a
20 warrant issued on probable cause;

21 e) ordering defendant Lockyer to inform and instruct all law
22 enforcement officials in the State of California that any
23 application of Proposition 69 to member of the plaintiff classes,
24 absent a new felony conviction or a warrant issued on probable
25 cause, is unconstitutional and unlawful and may not proceed; and
26 f) instructing defendants to promptly destroy any biological samples
27 from members of the plaintiff class that are in their possession or
28 that have been, or in future are, forwarded to the Department of

Justice (or any entity with which it has contracted), and to expunge all associated DNA profiles and other data from all state and local databases and other files, unless the submitting law enforcement agency has certified that the sample was taken either (a) following conviction for a felony offense or (b) pursuant to a warrant issued upon probable cause or other court order issued under authority other than Proposition 69.

g) Costs and attorneys fees incurred in this action pursuant to 42 U.S.C. § 1988 or other applicable authority.

h) Such other and further relief as may be just and proper.

DATED: *December 7, 2004*

COVINGTON & BURLING

By: 

Attorneys for Plaintiffs

SONYA D. WINNER, SBN 200348
DONALD W. BROWN, SBN 83347
KATE S. STEINHEIMER, SBN 226220
COVINGTON & BURLING
One Front Street
San Francisco, California 94111
Telephone: (415) 591-6000
Facsimile: (415) 591-6091

JULIA HARUMI MASS, SBN 189649
MARGARET C. CROSBY, SBN 56812
MAYA L. HARRIS, SBN 172115
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
CALIFORNIA, INC.
1663 Mission Street, Suite 460
San Francisco, CA 94103
Telephone: (415) 621-2493
Facsimile: (415) 255-8437

1
2 PETER ELIASBERG, SBN 189110
3 MARK ROSENBAUM, SBN 59940
4 RICARDO D. GARCIA, SBN 178111
5 ACLU FOUNDATION OF SOUTHERN
6 CALIFORNIA
7 1616 Beverly Boulevard
8 Los Angeles, CA 90026
9 Telephone: (213) 977-9500
10 Facsimile: (213) 250-3919

11 JORDAN BUDD, SBN 144288
12 AMERICAN CIVIL LIBERTIES UNION
13 FOUNDATION OF SAN DIEGO AND
14 IMPERIAL COUNTIES
15 P.O. Box 87131
16 San Diego, California 92138
17 Telephone: (619) 232-2121
18 Facsimile: (619) 232-0036

19 Attorneys for Plaintiffs

20 JEFFREY D. SCHWARTZ, SBN 80643
21 360 Ritch Street, #201
22 San Francisco, CA 94107
23 Telephone: (415) 777-3170
24 Facsimile: (415) 681-8643

25 Attorney for Plaintiff
26 Rachel Delucci-Youngberg
27
28

CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

DATED: *December 7, 2004*

COVINGTON & BURLING

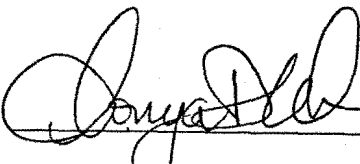
By: 
Attorneys for Plaintiffs

Exhibit A

TEXT OF PROPOSED LAWS

Proposition 68 (cont.)

SEC. 8.3. (a) Funds appropriated pursuant to the Gaming Revenue Act of 2004 shall not be deemed to be part of "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" as that term is used in paragraphs (2) and (3) of subdivision (b) of Section 8.

(b) Revenues derived from payments made pursuant to the Gaming Revenue Act of 2004 shall not be deemed to be "General Fund revenues," which may be appropriated pursuant to Article XIII B" as that term is used in paragraph (1) of subdivision (b) of Section 8 nor shall they be considered in the determination of "per capita General Fund revenues" as that term is used in paragraph (3) of subdivision (b) and in subdivision (e) of Section 8.

SEC. 14. Section 14 is added to Article XIII B of the California Constitution, to read:

SEC. 14. (a) For purposes of this article, "proceeds of taxes" shall not include the revenues created by the Gaming Revenue Act of 2004.

(b) For purposes of this article, "appropriations subject to limitation" of each entity of government shall not include appropriations of revenues from the Gaming Revenue Trust Fund created by the Gaming Revenue Act of 2004.

SEC. 15. Amendment

The statutory provisions of this act may be amended only by a vote of two-thirds of the membership of both houses of the Legislature. All statutory amendments to this act shall be to further the act and must be consistent with its purposes.

SEC. 16. Consistency With Other Ballot Measures

The provisions of this act are not in conflict with any initiative measure that appears on the same ballot that amends the California Constitution to authorize gaming of any kind. In the event that this act and another measure that amends the California Constitution to permit gaming of any kind are adopted at the same election, the courts are

hereby directed to reconcile their respective statutory provisions to the greatest extent possible and to give effect to every provision of both measures.

SEC. 17. Additional Funding

No moneys in the Gaming Revenue Trust Fund shall be used to supplant federal, state, or local funds used for child protective and foster care services, neighborhood sheriffs and police officers, and firefighters but shall be used exclusively to supplement the total amount of federal, state, and local funds allocated for child protective services and foster care which improve the educational outcomes of abused and neglected children and children in foster care and for additional sheriffs, police officers, and firefighters.

SEC. 18. Judicial Proceedings

In any action for declaratory or injunctive relief, or for relief by way of any extraordinary writ, wherein the construction, application, or validity of Section 3 of this act or any part thereof is called into question, a court shall not grant any temporary restraining order, preliminary or permanent injunction, or any peremptory writ of mandate, certiorari, or prohibition, or other provisional or permanent order to restrain, stay, or otherwise interfere with the operation of the act except upon a finding by the court, based on clear and convincing evidence, that the public interest will not be prejudiced thereby, and no such order shall be effective for more than 15 calendar days. A court shall not restrain any part of this act except the specific provisions that are challenged.

SEC. 19. Severability

If any provision of this act or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this act that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are severable.

Proposition 69

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends a section of the Government Code, and amends, repeals, and adds sections to the Penal Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION I. Title

(a) This measure shall be known and referred to as the DNA Fingerprint, Unsolved Crime and Innocence Protection Act.

SEC. II. Findings and Declarations of Purpose

The people of the State of California do hereby find and declare that:

(a) Our communities have a compelling interest in protecting themselves from crime.

(b) There is critical and urgent need to provide law enforcement officers and agencies with the latest scientific technology available for accurately and expeditiously identifying, apprehending, arresting, and convicting criminal offenders and exonerating persons wrongly suspected or accused of crime.

(c) Law enforcement should be able to use the DNA Database and Data Bank Program to substantially reduce the number of unsolved crimes; to help stop serial crime by quickly comparing DNA profiles of qualifying persons and evidence samples with as many investigations and cases as necessary to solve crime and apprehend perpetrators; to exonerate persons wrongly suspected or accused of crime; and to identify human remains.

(d) Expanding the statewide DNA Database and Data Bank Program is:

(1) The most reasonable and certain means to accomplish effective crime solving in California, to aid in the identification of missing and unidentified persons, and to exonerate persons wrongly suspected or

accused of crime;

(2) The most reasonable and certain means to solve crime as effectively as other states which have found that the majority of violent criminals have nonviolent criminal prior convictions, and that the majority of cold hits and criminal investigation links are missed if a DNA database or data bank is limited only to violent crimes;

(3) The most reasonable and certain means to rapidly and substantially increase the number of cold hits and criminal investigation links so that serial crime offenders may be identified, apprehended and convicted for crimes they committed in the past and prevented from committing future crimes that would jeopardize public safety and devastate lives; and

(4) The most reasonable and certain means to ensure that California's Database and Data Bank Program is fully compatible with, and a meaningful part of, the nationwide Combined DNA Index System (CODIS).

(e) The state has a compelling interest in the accurate identification of criminal offenders, and DNA testing at the earliest stages of criminal proceedings for felony offenses will help thwart criminal perpetrators from concealing their identities and thus prevent time-consuming and expensive investigations of innocent persons.

(f) The state has a compelling interest in the accurate identification of criminal offenders, and it is reasonable to expect qualifying offenders to provide forensic DNA samples for the limited identification purposes set forth in this chapter.

(g) Expanding the statewide DNA Database and Data Bank Program is the most reasonable and certain means to ensure that persons wrongly suspected or accused of crime are quickly exonerated so that they may reestablish their standing in the community. Moreover, a person whose sample has been collected for Database and Data Bank purposes must be able to seek expungement of his or her profile from the Database and Data Bank.

SEC. III. DNA and Forensic Identification Database and Data Bank Act

TEXT OF PROPOSED LAWS

Proposition 69 (cont.)

SEC. 1. Section 295 of the Penal Code is amended to read:

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

(b) The ~~Legislature finds and declares~~ 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 ~~sexual and violent offenders criminal offenders and exonerating the innocent~~.

(2) It is the intent of the ~~Legislature~~ people of the State of California, in order to further the purposes of this chapter, to require DNA and forensic identification ~~database~~ 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 ~~database~~ data bank in order to clarify existing law and to enable the state's DNA and forensic identification ~~database and database program~~ 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~~ 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 ~~violent~~ 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)~~ (g) The Department of Justice, through its DNA Laboratory, shall be responsible for the management and administration of the state's ~~DNA database and database identification program~~ 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)~~ (h) The Department of Justice shall be responsible for implementing this chapter.

(i) The Department of Justice DNA Laboratory, the Department of Corrections, the Board of Corrections, and the Department of the Youth Authority ~~shall~~ 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 ~~database~~ data bank blood specimens, ~~saliva~~ buccal swab samples, and thumb and palm print impressions as required by this chapter are collected from qualifying ~~offenders~~ 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 the any disposition rendered in the case of a juvenile who is ~~adjudged a ward of the court 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 ~~offender~~ person has not given the required specimens, samples or print impressions. ~~The Before adopting any policy or regulation implementing this chapter, the Department of Corrections, the Board of Corrections, and the Department of the Youth Authority shall adopt the policies and regulations for implementing this chapter with seek advice from and in consultation 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, the Department of Corrections, the Department of the Youth Authority, or the Board of Corrections 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, the Board of Corrections, and the Department of the Youth Authority shall submit copies of any of their policies and regulations with respect to this chapter to the Department of Justice DNA Laboratory Director, and ~~periodically~~ quarterly shall submit to the director written reports updating the director as to the status of their 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 website 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, 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 shall submit a quarterly report to be published electronically on a Department of Corrections website 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.

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

(A) The requisite specimens, samples, and print impressions are collected from qualifying ~~offenders~~ 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 ~~offender~~ 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 this chapter.

(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 reason-

TEXT OF PROPOSED LAWS

Proposition 69 (cont.)

able 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 Department of Justice DNA Testing Fund as created by paragraph (2) of subdivision (b) of Section 290.3.

(g) (k) Any funds appropriated by the Legislature to implement this chapter, including funds or costs ordered pursuant to subdivision (f) to reimburse counties, shall be deposited into the Department of Justice DNA Testing Fund as created by paragraph (2) of subdivision (b) of Section 290.3.

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

SEC. 2. Section 295.1 of the Penal Code is amended to read:

295.1. (a) The Department of Justice shall perform DNA analysis and other forensic identification analysis pursuant to this chapter only for identification purposes.

(b) The Department of Justice Bureau of Criminal Identification and Information shall perform examinations of palm prints pursuant to this chapter only for identification purposes.

(c) The DNA Laboratory of the Department of Justice shall serve as a repository for blood specimens and ~~active~~ buccal swab and other biological samples collected, and shall analyze specimens and samples, and store, compile, correlate, compare, maintain, and use DNA and forensic identification profiles and records related to the following:

- (1) Forensic casework and forensic unknowns.
- (2) Known and evidentiary specimens and samples from crime scenes or criminal investigations.
- (3) Missing or unidentified persons.
- (4) ~~Offenders~~ Persons required to provide specimens, samples, and print impressions under this chapter.
- (5) Legally obtained samples.

(f) (6) Anonymous DNA records used for training, research, statistical analysis of populations, quality assurance, or quality control.

(d) The computerized data bank and database of the DNA Laboratory of the Department of Justice shall include files as necessary to implement this chapter.

(e) Nothing in this section shall be construed as requiring the Department of Justice to provide specimens or samples for quality control or other purposes to those who request specimens or samples.

(f) Submission of samples, specimens, or profiles for the state DNA Database and Data Bank Program shall include information as required by the Department of Justice for ensuring search capabilities and compliance with National DNA Index System (NDIS) standards.

SEC. 3. Section 296 of the Penal Code is amended to read:

296. (a) The following persons shall provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required pursuant to this chapter for law enforcement identification analysis:

(a) (1) Any person, including any juvenile, who is convicted of or pleads guilty or no contest to any felony offense ~~any of the following crimes~~, or is found not guilty by reason of insanity of any of the following crimes, felony offense, or any juvenile who is adjudicated under Section 602 of the Welfare and Institutions Code for committing any felony offense, shall, regardless of sentence imposed or disposition rendered, be required to provide two specimens of blood, a saliva sample, right thumbprints, and a full palm print impression of each hand for law enforcement identification analysis:

(A) Any offense or attempt to commit any felony offense described in Section 290, or any felony offense that imposes upon a person the duty to register in California as a sex offender under Section 290.

(B) Murder in violation of Section 187, 190, 190.05, or any degree of murder as set forth in Chapter 1 (commencing with Section 187) of Title 8 of Part 1 of the Penal Code, or any attempt to commit murder.

(C) Voluntary manslaughter in violation of Section 192 or an attempt to commit voluntary manslaughter.

(D) Felony spousal abuse in violation of Section 273.5.

(E) Aggravated sexual assault of a child in violation of Section 269.

(F) A felony offense of assault or battery in violation of Section 241, 241.1, 242, 243, 243.1, 243.2, 243.3, 243.4, 243.7, 244, 245, 245.2, 245.3, or 245.5.

(G) Kidnapping in violation of subdivisions (a) to (e), inclusive, of Section 207, or Section 208, 209, 209.5, or 210, or an attempt to commit any of these offenses.

(H) Mayhem in violation of Section 203 or aggravated mayhem in violation of Section 205, or an attempt to commit either of these offenses.

(I) Torture in violation of Section 206 or an attempt to commit torture.

(J) Burglary as defined in subdivision (a) of Section 460 or an attempt to commit this offense.

(K) Robbery as defined in subdivision (a) or (b) of Section 212.5 or an attempt to commit either of these offenses.

(L) Arson in violation of subdivision (a) or (b) of Section 451 or an attempt to commit either of these offenses.

(M) Carjacking in violation of Section 215 or an attempt to commit this offense.

(N) Terrorist activity in violation of Section 11418 or 11419, or a felony violation of Section 11418.5, or an attempt to commit any of these offenses.

(2) Any adult person who is arrested for or charged with any of the following felony offenses:

(A) Any felony offense specified in Section 290 or attempt to commit any felony offense described in Section 290, or any felony offense that imposes upon a person the duty to register in California as a sex offender under Section 290.

(B) Murder or voluntary manslaughter or any attempt to commit murder or voluntary manslaughter.

(C) 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.

(2) (3) Any person, including any juvenile, who is required to register under Section 290 or 457.1 because of the commission of, or the attempt to commit, a felony or misdemeanor offense specified in Section 290, or any person, including any juvenile, who is housed in a mental health facility or sex offender treatment program after referral to such facility or program by a court after being charged with any felony offense and who is committed to any institution under the jurisdiction of the Department of the Youth Authority where he or she was confined, or is granted probation, or is or was committed to a state hospital as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall be required to provide two specimens of blood, a saliva sample, right thumbprints, and a full palm print impression of each hand to that institution or, in the case of a person granted probation, to a person and at a location within the county designated for testing.

(4) The term "felony" as used in this subdivision includes an attempt to commit the offense.

(5) Nothing in this chapter shall be construed as prohibiting collection and analysis of specimens, samples, or print impressions as a condition of a plea for a non-qualifying offense.

(b) The provisions of this chapter and its requirements for submission of specimens, samples and print impressions as soon as administratively practicable shall apply to all qualifying persons regardless of sentence imposed, including any sentence of death, life without the possibility of parole, or any life or indeterminate term, or any other disposition rendered in the case of an adult or juvenile tried as an adult, or whether the person is diverted, fined, or referred for evaluation, and regardless of disposition rendered or placement made in the case of juvenile who is found to have committed any felony offense or is adjudicated under Section 602 of the Welfare and Institutions Code.

(b) (c) The provisions of this chapter and its requirements for submission to testing of specimens, samples, and print impressions as soon as administratively practicable to provide specimens, samples, and print impressions by qualified persons as described in subdivision (a) shall apply regardless of placement or confinement in any mental hospital or other public or private treatment facility, and shall include, but not be limited to, the following persons, including juveniles:

(1) Any person committed to a state hospital or other treatment facility as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any person who has a severe mental disorder as set forth within the provisions of Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

TEXT OF PROPOSED LAWS

Proposition 69 (cont.)

(3) Any person found to be a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(e) (d) The provisions of this chapter are mandatory and apply whether or not the court advises a person, including any juvenile, that he or she must provide the ~~database~~ data bank and database specimens, samples, and print impressions as a condition of probation, parole, or any plea of guilty, no contest, or not guilty by reason of insanity, or any admission to any of the offenses described in subdivision (a).

(d) At sentencing or disposition, the prosecuting attorney shall verify in writing that the requisite samples are required by law, and that they have been taken, or are scheduled to be taken before the offender is released on probation, or other scheduled release. However, a failure by the prosecuting attorney or any other law enforcement agency to verify sample requirement or collection shall not relieve a person of the requirement to provide samples.

(e) If at any stage of court proceedings the prosecuting attorney determines that specimens, samples, and print impressions required by this chapter have not already been taken from any person, as defined under subdivision (a) of Section 296, the prosecuting attorney shall notify the court orally on the record, or in writing, and request that the court order collection of the specimens, samples, and print impressions required by law. However, a failure by the prosecuting attorney or any other law enforcement agency to notify the court shall not relieve a person of the obligation to provide specimens, samples, and print impressions pursuant to this chapter.

(f) Prior to final disposition or sentencing in the case the court shall inquire and verify that the specimens, samples, and print impressions required by this chapter have been obtained and that this fact is included in the abstract of judgment or dispositional order in the case of a juvenile. The abstract of judgment issued by the court shall indicate that the court has ordered the person to comply with the requirements of this chapter and that the person shall be included in the state's DNA and Forensic Identification Data Base and Data Bank program and be subject to this chapter.

However, failure by the court to verify specimen, sample, and print impression collection or enter these facts in the abstract of judgment or dispositional order in the case of a juvenile shall not invalidate an arrest, plea, conviction, or disposition, or otherwise relieve a person from the requirements of this chapter.

SEC. 4. Section 296.1 of the Penal Code is amended to read:

296.1. (a) The specimens, samples, and print impressions required by this chapter shall be collected from persons described in subdivision (a) of Section 296 for present and past qualifying offenses of record as follows:

(1) Collection from any adult person following arrest for a felony offense as specified in subparagraphs (A), (B), and (C) of paragraph (2) of subdivision (a) of Section 296:

(A) Each adult person arrested for a felony offense as specified in subparagraphs (A), (B), and (C) of paragraph (2) of subdivision (a) of Section 296 shall provide the buccal swab samples and thumb and palm print impressions and any blood or other specimens required pursuant to this chapter immediately following arrest, or during the booking or intake or reception center process or as soon as administratively practicable after arrest, but, in any case, prior to release on bail or pending trial or any physical release from confinement or custody.

(B) If the person subject to this chapter did not have specimens, samples, and print impressions taken immediately following arrest or during booking or intake procedures or is released on bail or pending trial or is not confined or incarcerated at the time of sentencing or otherwise bypasses a prison inmate reception center maintained by the Department of Corrections, the court shall order the person to report within five calendar days to a county jail facility or to a city, state, local, private, or other designated facility to provide the required specimens, samples, and print impressions in accordance with subdivision (i) of Section 295.

(2) Collection from persons confined or in custody after conviction or adjudication:

(A) Any person, including any juvenile who is imprisoned or confined or placed in a state correctional institution, a county jail, a facility within the jurisdiction of the Department of the Youth Authority, the Board of Corrections, a residential treatment program, or any state, local, city, private, or other facility after a conviction of any felony or

misdemeanor offense, or any adjudication or disposition rendered in the case of a juvenile, whether or not that crime or offense is one set forth in subdivision (a) of Section 296, shall provide buccal swab samples and thumb and palm print impressions and any blood or other specimens required pursuant to this chapter, immediately at intake, or during the prison reception center process, or as soon as administratively practicable at the appropriate custodial or receiving institution or placed in program if:

(i) The person has a record of any past or present conviction or adjudication as a ward of the court in California of a qualifying offense described in subdivision (a) of Section 296 or has a record of any past or present conviction or adjudication in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as an offense described in subdivision (a) of Section 296; and

(ii) The person's blood specimens, buccal swab samples, and thumb and palm print impressions authorized by this chapter are not in the possession of the Department of Justice DNA Laboratory or have not been recorded as part of the department's DNA data bank program.

(3) Collection from persons on probation, parole, or other release:

(A) Any person, including any juvenile, who has a record of any past or present conviction or adjudication for an offense set forth in subdivision (a) of Section 296, and who is on probation or parole for any felony or misdemeanor offense, whether or not that crime or offense is one set forth in subdivision (a) of Section 296, shall provide buccal swab samples and thumb and palm print impressions and any blood specimens required pursuant to this chapter, if:

(i) The person has a record of any past or present conviction or adjudication as a ward of the court in California of a qualifying offense described in subdivision (a) of Section 296 or has a record of any past or present conviction or adjudication in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as an offense described in subdivision (a) of Section 296; and

(ii) The person's blood specimens, buccal swab samples, and thumb and palm print impressions authorized by this chapter are not in the possession of the Department of Justice DNA Laboratory or have not been recorded as part of the department's DNA data bank program.

(B) The person shall have any required specimens, samples, and print impressions collected within five calendar days of being notified by the court, or a law enforcement agency or other agency authorized by the Department of Justice. The specimens, samples, and print impressions shall be collected in accordance with subdivision (i) of Section 295 at a county jail facility or a city, state, local, private, or other facility designated for this collection.

(4) Collection from parole violators and others returned to custody:

(A) If a person, including any juvenile, who has been released on parole, furlough, or other release for any offense or crime, whether or not set forth in subdivision (a) of Section 296, is returned to a state correctional or other institution for a violation of a condition of his or her parole, furlough, or other release, or for any other reason, that person shall provide buccal swab samples and thumb and palm print impressions and any blood or other specimens required pursuant to this chapter, at a state correctional or other receiving institution, if:

(i) The person has a record of any past or present conviction or adjudication as a ward of the court in California of a qualifying offense described in subdivision (a) of Section 296 or has a record of any past or present conviction or adjudication in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as an offense described in subdivision (a) of Section 296; and

(ii) The person's blood specimens, buccal swab samples, and thumb and palm print impressions authorized by this chapter are not in the possession of the Department of Justice DNA Laboratory or have not been recorded as part of the department's DNA data bank program.

(5) Collection from persons accepted into California from other jurisdictions:

(A) When an offender from another state is accepted into this state under any of the interstate compacts described in Article 3 (commencing with Section 11173) or Article 4 (commencing with Section 11189) of Chapter 2 of Title 1 of Part 4 of this code, or Chapter 4 (commencing with Section 1300) of Part 1 of Division 2 of the Welfare and

TEXT OF PROPOSED LAWS

Proposition 69 (cont.)

Institutions Code, or under any other reciprocal agreement with any county, state, or federal agency, or any other provision of law, whether or not the offender is confined or released, the acceptance is conditional on the offender providing blood specimens, buccal swab samples, and palm and thumb print impressions pursuant to this chapter, if the offender has a record of any past or present conviction or adjudication in California of a qualifying offense described in subdivision (a) of Section 296 or has a record of any past or present conviction or adjudication or had a disposition rendered in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as an offense described in subdivision (a) of Section 296.

(B) If the person is not confined, the specimens, samples, and print impressions required by this chapter must be provided within five calendar days after the person reports to the supervising agent or within five calendar days of notice to the person, whichever occurs first. The person shall report to a county jail facility in the county where he or she resides or temporarily is located to have the specimens, samples, and print impressions collected pursuant to this chapter. The specimens, samples, and print impressions shall be collected in accordance with subdivision (f) of Section 295.

(C) If the person is confined, he or she shall provide the blood specimens, buccal swab samples, and thumb and palm print impressions required by this chapter as soon as practicable after his or her receipt in a state, county, city, local, private, or other designated facility.

(6) Collection from persons in federal institutions:

(A) Subject to the approval of the Director of the FBI, persons confined or incarcerated in a federal prison or federal institution who have a record of any past or present conviction or juvenile adjudication for a qualifying offense described in subdivision (a) of Section 296, or of a similar crime under the laws of the United States or any other state that would constitute an offense described in subdivision (a) of Section 296, are subject to this chapter and shall provide blood specimens, buccal swab samples, and thumb and palm print impressions pursuant to this chapter if any of the following apply:

(i) The person committed a qualifying offense in California.

(ii) The person was resident of California at the time of the qualifying offense.

(iii) The person has any record of a California conviction for an offense described in subdivision (a) of Section 296, regardless of when the crime was committed.

(iv) The person will be released in California.

(B) The Department of Justice DNA Laboratory shall, upon the request of the United States Department of Justice, forward portions of the specimens or samples, taken pursuant to this chapter, to the United States Department of Justice DNA data bank laboratory. The specimens and samples required by this chapter shall be taken in accordance with the procedures set forth in subdivision (f) of Section 295. The Department of Justice DNA Laboratory is authorized to analyze and upload specimens and samples collected pursuant to this section upon approval of the Director of the FBI.

(b) Retroactive application of paragraphs (1), (2), (3), (4), (5), and (6) of subdivision (a).

(1) Subdivision (a) and all of its paragraphs shall have retroactive application. Collection shall occur pursuant to paragraphs (1), (2), (3), (4), (5), and (6) of subdivision (a) regardless of when the crime charged or committed became a qualifying offense pursuant to this chapter, and regardless of when the person was convicted of the qualifying offense described in subdivision (a) of Section 296 or a similar crime under the laws of the United States or any other state, or pursuant to the United States Code of Military Justice, 10 U.S.C., Sections 801 and following, or when disposition was rendered in the case of a juvenile who is adjudged a ward of the court for commission of a qualifying offense described in subdivision (a) of Section 296 or a similar crime under the laws of the United States or any other state.

(e) Any person, including any juvenile, who comes within the provisions of this chapter for an offense set forth in subdivision (a) of Section 296, and who is granted probation, or serves his or her entire term of confinement in a county jail, or is not sentenced to a term of confinement in a state prison facility, or otherwise bypasses a prison inmate reception center maintained by the Department of Corrections, shall, as soon as administratively practicable, but in any case, prior to physical release from custody, be required to provide two specimens of blood, a saliva sample, and thumb and palm print impressions as set

forth in subdivision (e) of Section 296, at a county jail facility or other state, local, or private facility designated for the collection of these specimens, samples, and print impressions, in accordance with subdivision (f) of Section 295.

If the person subject to this chapter is not incarcerated at the time of sentencing, the court shall order the person to report within five calendar days to a county jail facility or other state, local, or private facility designated for the collection of specimens, samples, and print impressions to provide these specimens, samples, and print impressions in accordance with subdivision (f) of Section 295.

(b) If a person who comes within the provisions of this chapter for an offense set forth in subdivision (a) of Section 296 is sentenced to serve a term of imprisonment in a state correctional institution, the Director of Corrections shall collect the blood specimens, saliva samples, and thumb and palm print impressions required by this chapter from the person during the intake process at the reception center designated by the director, or as soon as administratively practicable thereafter at a receiving penal institution.

(e) Any person, including, but not limited to, any juvenile and any person convicted and sentenced to death, life without the possibility of parole, or any life or indeterminate term, who is imprisoned or confined in a state correctional institution, a county jail, a facility within the jurisdiction of the Department of the Youth Authority, or any other state, local, or private facility after a conviction of any crime, or disposition rendered in the case of a juvenile, whether or not that crime or offense is one set forth in subdivision (a) of Section 296, shall provide two specimens of blood, a saliva sample, and thumb and palm print impressions pursuant to this chapter, as soon as administratively practicable once it has been determined that both of the following apply:

(1) The person has been convicted or adjudicated a ward of the court in California of a qualifying offense described in subdivision (a) of Section 296 or has been convicted or had a disposition rendered in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as an offense described in subdivision (a) of Section 296.

(2) The person's blood specimens, saliva samples, and thumb and palm print impressions authorized by this chapter are not in the possession of the Department of Justice DNA Laboratory as part of the DNA data bank program.

This subdivision applies regardless of when the person was convicted of the qualifying offense described in subdivision (a) of Section 296 or a similar crime under the laws of the United States or any other state, or when disposition was rendered in the case of a juvenile who is adjudged a ward of the court for commission of a qualifying offense described in subdivision (a) of Section 296 or a similar crime under the laws of the United States or any other state.

(d) Any person, including any juvenile, who comes within the provisions of this chapter for an offense set forth in subdivision (a) of Section 296, and who is on probation or parole, shall be required to provide two specimens of blood, a saliva sample, and thumb and palm print impressions as required pursuant to this chapter, if it is determined that the person has not previously provided these specimens, samples, and print impressions to law enforcement, or if it is determined that these specimens, samples, and print impressions are not in the possession of the Department of Justice. The person shall have the specimens, samples, and print impressions collected within five calendar days of being notified by a law enforcement agency or other agency authorized by the Department of Justice. The specimens, samples, and print impressions shall be collected in accordance with subdivision (f) of Section 295 at a county jail facility or other state, local, or private facility designated for this collection.

This subdivision shall apply regardless of when the crime committed became a qualifying offense pursuant to this chapter.

(e) When an offender from another state is accepted into this state under any of the interstate compacts described in Article 2 (commencing with Section 11175) or Article 4 (commencing with Section 1189) of Chapter 2 of Title 1 of Part 4 of this code, or Chapter 4 (commencing with Section 1200) of Part 1 of Division 2 of the Welfare and Institutions Code, or under any other reciprocal agreement with any county, state or federal agency, or any other provision of law, whether or not the offender is confined or released, the acceptance is conditional on the offender providing blood specimens, saliva samples, and palm and thumb print impressions pursuant to this chapter, if the offender was convicted of an offense which would qualify as a crime described in subdivision (a) of Section 296, or if the person was con-

TEXT OF PROPOSED LAWS

Proposition 69 (cont.)

victed of a similar crime under the laws of the United States or any other state.

If the person is not confined, the specimens, samples, and print impressions required by this chapter must be provided within five calendar days after the offender reports to the supervising agent or within five calendar days of notice to the offender, whichever occurs first. The person shall report to a county jail facility in the county where he or she resides or temporarily is located to have the specimens, samples, and print impressions collected pursuant to this chapter. The specimens, samples, and print impressions shall be collected in accordance with subdivision (f) of Section 295.

If the person is confined, he or she shall provide the blood specimens, saliva samples, and thumb and palm print impressions required by this chapter as soon as practicable after his or her receipt in a state, county, local, private, or other facility.

(f) Subject to the approval of the Director of the Federal Bureau of Investigation, persons confined or incarcerated in a federal prison or federal institution located in California who are convicted of a qualifying offense described in subdivision (a) of Section 296 or of a similar crime under the laws of the United States or any other state that would constitute an offense described in subdivision (a) of Section 296, are subject to this chapter and shall provide blood specimens, saliva samples, and thumb and palm print impressions pursuant to this chapter if any of the following apply:

(1) The person committed a qualifying offense in California.

(2) The person was a resident of California at the time of the qualifying offense.

(3) The person has any record of a California conviction for a sex or violent offense described in subdivision (a) of Section 296, regardless of when the crime was committed.

(4) The person will be released in California.

Once a federal data bank is established and accessible to the Department of Justice, the Department of Justice DNA Laboratory shall, upon the request of the United States Department of Justice, forward the samples taken pursuant to this chapter, with the exception of those taken from suspects pursuant to subdivision (b) of Section 297, to the United States Department of Justice DNA data bank laboratory. The samples and impressions required by this chapter shall be taken in accordance with the procedures set forth in subdivision (f) of Section 295.

(g) If a person who is released on parole, furlough, or other release, is returned to a state correctional institution for a violation of a condition of his or her parole, furlough, or other release, and is serving or at any time has served a term of imprisonment for committing an offense described in subdivision (a) of Section 296, and he or she did not provide specimens, samples, and print impressions pursuant to the state's DNA data bank program, the person shall submit to collection of blood specimens, saliva samples, and thumb and palm print impressions at a state correctional institution.

This subdivision applies regardless of the crime or Penal Code violation for which a person is returned to a state correctional institution and regardless of the date the qualifying offense was committed.

SEC. 5. Section 297 of the Penal Code is amended to read:

297. (a) (1) The laboratories of the Department of Justice that are accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB) or any certifying body approved by the ASCLD/LAB, and any law enforcement crime laboratory designated by the Department of Justice that is accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB, are authorized to analyze crime scene samples and other samples of known and unknown origin and to compare and check the forensic identification profiles, including DNA profiles, of these samples against available DNA and forensic identification data banks and data bases databases in order to establish identity and origin of samples for identification purposes.

(2) Laboratories, including law enforcement laboratories, that are accredited by ASCLD/LAB or any certifying body approved by the ASCLD/LAB that contract with the Department of Justice pursuant to Section 298.3 are authorized to analyze anonymous analysis of specimens and samples for forensic identification as provided in this chapter.

(b) (1) Except as provided in paragraph (2), a biological sample taken in the course of a criminal investigation, either voluntarily or by court order, from a person who has not been convicted, may only be compared to samples taken from that specific criminal investigation and may not be compared to any other samples from any other criminal investigation without a court order.

(2) A biological sample obtained from a suspect, as defined in paragraph (3), in a criminal investigation may be analyzed for forensic identification profiles, including DNA profiles so that the profile can be placed in a suspect data base file and searched against the DNA data bank profiles of case evidence. For the purposes of this subdivision, the DNA data bank comparison of suspect and evidence profiles may be made by the DNA Laboratory of the Department of Justice, or any crime laboratory designated by the Department of Justice that is accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB.

(3) For the purposes of this subdivision, "a suspect" means a person against whom an information or indictment has been filed for one of the crimes listed in subdivision (a) of Section 296. For the purposes of this subdivision, a person shall remain a suspect for two years from the date of the filing of the information or indictment or until the DNA laboratory receives notification that the person has been acquitted of the charges or the charges were dismissed.

(b) (1) A biological sample obtained from a suspect in a criminal investigation for the commission of any crime may be analyzed for forensic identification profiles, including DNA profiles, by the DNA Laboratory of the Department of Justice or any law enforcement crime laboratory accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB and then compared by the Department of Justice in and between as many cases and investigations as necessary, and searched against the forensic identification profiles, including DNA profiles, stored in the files of the Department of Justice DNA data bank or database or any available data banks or databases as part of the Department of Justice DNA Database and Data Bank Program.

(2) The law enforcement investigating agency submitting a specimen, sample, or print impression to the DNA Laboratory of the Department of Justice or law enforcement crime laboratory pursuant to this section shall inform the Department of Justice DNA Laboratory within two years whether the person remains a suspect in a criminal investigation. Upon written notification from a law enforcement agency that a person is no longer a suspect in a criminal investigation, the Department of Justice DNA Laboratory shall remove the suspect sample from its data bank files. However, any identification, warrant, arrest, or prosecution based upon a data bank or database match shall not be invalidated or dismissed due to a failure to purge or delay in purging records.

(c) All laboratories, including the Department of Justice DNA laboratories, contributing DNA profiles for inclusion in California's DNA Data Bank shall be accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB. Additionally, each laboratory shall submit to the Department of Justice for review the annual report required by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB which documents the laboratory's adherence to ASCLD/LAB standards or the standards of any certifying body approved by the ASCLD/LAB. The requirements of this subdivision apply to California laboratories only and do not preclude DNA profiles developed in California from being searched in the National DNA Data Base Database or Data Bank (CODIS).

(d) Nothing in this section precludes local law enforcement DNA laboratories meeting Technical Working Group on DNA Analysis Methods (TWGDAM) or Scientific Working Group on DNA Analysis Methods (SWGDM) guidelines or standards promulgated by the DNA Advisory Board as established pursuant to Section 14131 of Title 42 of the United States Code, from maintaining local forensic databases and data banks or performing forensic identification analyses, including DNA profiling, independent of independently from the Department of Justice DNA and Forensic Identification Data Base and Data Bank program Program.

(e) The limitation on the types of offenses set forth in subdivision (a) of Section 296 as subject to the collection and testing procedures of this chapter is for the purpose of facilitating the administration of this chapter by the Department of Justice, and shall not be considered cause for dismissing an investigation or prosecution or reversing a verdict or disposition.

TEXT OF PROPOSED LAWS

Proposition 69 (cont.)

(f) The detention, arrest, wardship, *adjudication*, or conviction of a person based upon a data bank match or ~~data-base database~~ information is not invalidated if it is ~~later~~ determined that the specimens, samples, or print impressions were obtained or placed or retained in a data bank or ~~data-base database~~ by mistake.

SEC. 6. Section 298 of the Penal Code is amended to read:

298. (a) The Director of Corrections, or the Chief Administrative Officer of the detention facility, jail, or other facility at which the blood specimens, ~~active~~ buccal swab samples, and thumb and palm print impressions were collected shall cause these specimens, samples, and print impressions to be forwarded promptly to the Department of Justice. The specimens, samples, and print impressions shall be collected by a person using a Department of Justice approved collection kit and in accordance with the requirements and procedures set forth in subdivision (b).

(b) (1) The Department of Justice shall provide all blood specimen vials, buccal swab collectors, mailing tubes, labels, and instructions for the collection of the blood specimens, ~~active~~ buccal swab samples, and thumbprints. The specimens, samples, and thumbprints shall thereafter be forwarded to the DNA Laboratory of the Department of Justice for analysis of DNA and other forensic identification markers.

Additionally, the Department of Justice shall provide all full palm print cards, mailing envelopes, and instructions for the collection of full palm prints. The full palm prints, on a form prescribed by the Department of Justice, shall thereafter be forwarded to the Department of Justice for maintenance in a file for identification purposes.

(2) The withdrawal of blood shall be performed in a medically approved manner. Only health care providers trained and certified to draw blood may withdraw the blood specimens for purposes of this section.

(3) Buccal swab samples may be procured by law enforcement or corrections personnel or other individuals trained to assist in buccal swab collection.

~~(3)~~ (4) Right thumbprints and a full palm print impression of each hand shall be taken on forms prescribed by the Department of Justice. The palm print forms shall be forwarded to and maintained by the Bureau of Criminal Identification and Information of the Department of Justice. Right thumbprints also shall be taken at the time of the ~~withdrawal~~ collection of blood samples and specimens and shall be placed on the sample and specimen containers and forms as directed by the Department of Justice and the blood vial label. The blood vial samples, specimens, and forms and thumbprint forms shall be forwarded to and maintained by the DNA Laboratory of the Department of Justice.

(5) The law enforcement or custodial agency collecting specimens, samples, or print impressions is responsible for confirming that the person qualifies for entry into the Department of Justice DNA Database and Data Bank Program prior to collecting the specimens, samples, or print impressions pursuant to this chapter.

~~(4)~~ (6) The DNA Laboratory of the Department of Justice is responsible for establishing procedures for entering data bank and ~~data-base database~~ information. The DNA laboratory procedures shall confirm that the offender qualifies for entry into the DNA data bank prior to actual entry of the information in to the DNA data bank.

(c) (1) Persons authorized to draw blood or obtain samples or print impressions under this chapter for the data bank or ~~data-base database~~ shall not be civilly or criminally liable either for withdrawing blood when done in accordance with medically accepted procedures, or for obtaining ~~active~~ buccal swab samples by scraping inner cheek cells of the mouth, or thumb or palm print impressions when performed in accordance with standard professional practices.

(2) There is no civil or criminal cause of action against any law enforcement agency or the Department of Justice, or any employee thereof, for a mistake in confirming a person's or sample's qualifying status for inclusion within the database or data bank or in placing an entry in a data bank or a ~~data-base database~~.

(3) The failure of the Department of Justice or local law enforcement to comply with Article 4 or any other provision of this chapter shall not invalidate an arrest, plea, conviction, or disposition.

SEC. 7. Section 298.2 is added to the Penal Code, to read:

298.2. (a) Any person who is required to submit a specimen sample or print impression pursuant to this chapter who engages or attempts to engage in any of the following acts is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years:

(1) Knowingly facilitates the collection of a wrongfully attributed blood specimen, buccal swab sample, or thumb or palm print impression, with the intent that a government agent or employee be deceived as to the origin of a DNA profile or as to any identification information associated with a specimen, sample, or print impression required for submission pursuant to this chapter.

(2) Knowingly tampers with any specimen, sample, print, or the collection container for any specimen or sample, with the intent that any government agent or employee be deceived as to the identity of the person to whom the specimen, sample, or print relates.

SEC. 8. Section 298.3 is added to the Penal Code, to read:

298.3. (a) To ensure expeditious and economical processing of offender specimens and samples for inclusion in the FBI's CODIS System and the state's DNA Database and Data Bank Program, the Department of Justice 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 provided in this chapter and in accordance with the quality assurance requirement established by CODIS and ASCLD/LAB.

(b) Contingent upon the availability of sufficient funds in the state's DNA Identification Fund established pursuant to Section 76104.6, the Department of Justice DNA Laboratory shall immediately contract with other laboratories, whether public or private, including law enforcement laboratories, for the anonymous analysis of offender reference specimens or samples and any arrestee reference specimens or samples collected pursuant to subdivision (a) of Section 296 for forensic identification testing as provided in subdivision (a) of this section and in accordance with the quality assurance requirements established by CODIS and ASCLD/LAB for any specimens or samples that are not fully analyzed and uploaded into the CODIS database within six months of the receipt of the reference specimens or samples by the Department of Justice DNA Laboratory.

SEC. 9. Section 299 of the Penal Code is amended to read:

299. (e) A person whose DNA profile has been included in the data bank pursuant to this chapter shall have his or her information and materials expunged from the data bank when the underlying conviction or disposition serving as the basis for including the DNA profile has been reversed and the case dismissed, the defendant has been found factually innocent of the underlying offense pursuant to Section 851.8, the defendant has been found not guilty, or the defendant has been acquitted of the underlying offense. The court issuing the reversal, dismissal, or acquittal shall order the expungement and shall send a copy of that order to the Department of Justice DNA Laboratory Director. Upon receipt of the court order, the Department of Justice shall expunge all identifiable information in the data bank and any criminal identification records pertaining to the person.

(a) A person whose DNA profile has been included in the data bank pursuant to this chapter shall have his or her DNA specimen and sample destroyed and searchable database profile expunged from the data bank program pursuant to the procedures set forth in subdivision (b) if the person has no past or present offense or pending charge which qualifies that person for inclusion within the state's DNA and Forensic Identification Database and Data Bank Program and there otherwise is no legal basis for retaining the specimen or sample or searchable profile.

(b) (1) A person whose DNA profile has been included in a data bank pursuant to this chapter Pursuant to subdivision (a), a person who has no past or present qualifying offense, and for whom there otherwise is no legal basis for retaining the specimen or sample or searchable profile, may make a written request to expunge information and materials from the data bank have his or her specimen and sample destroyed and searchable database profile expunged from the data bank program if:

(1) Following arrest, no accusatory pleading has been filed within the applicable period allowed by law charging the person with a qualifying offense as set forth in subdivision (a) of Section 296 or if the charges which served as the basis for including the DNA profile in the state's DNA Database and Data Bank Identification Program have been dismissed prior to adjudication by a trier of fact;

(2) The underlying conviction or disposition serving as the basis for including the DNA profile has been reversed and the case dismissed;

(3) The person has been found factually innocent of the underlying offense pursuant to Section 851.8, or Section 781.5 of the Welfare and Institutions Code; or

TEXT OF PROPOSED LAWS

Proposition 69 (cont.)

(4) The defendant has been found not guilty or the defendant has been acquitted of the underlying offense.

(c) (1) The person requesting the data bank entry to be expunged must send a copy of his or her request to the trial court of the county where the arrest occurred, or that entered the conviction or rendered disposition in the case, to the DNA Laboratory of the Department of Justice, and to the prosecuting attorney of the county in which he or she was arrested or convicted, or adjudicated, with proof of service on all parties. The court has the discretion to grant or deny the request for expungement. The denial of a request for expungement is a nonappealable order and shall not be reviewed by petition for writ.

(2) Except as provided below, the Department of Justice shall ~~destroy a specimen and sample and expunge the searchable DNA database profile of all identifiable information in the data bank and any criminal identification records~~ pertaining to the person who has no present or past qualifying offense of record upon receipt of a court order that verifies the applicant has made the necessary showing at a noticed hearing, and that includes all of the following:

(A) The written request for expungement pursuant to this section.

(B) A certified copy of the court order reversing and dismissing the conviction or case , or a letter from the district attorney certifying that no accusatory pleading has been filed or the charges which served as the basis for collecting a DNA specimen and sample have been dismissed prior to adjudication by a trier of fact, the defendant has been found factually innocent, the defendant has been found not guilty, the defendant has been acquitted of the underlying offense, or the underlying conviction has been reversed and the case dismissed.

(C) Proof of written notice to the prosecuting attorney and the Department of Justice that expungement has been requested.

(D) A court order verifying that no retrial or appeal of the case is pending, that it has been at least 180 days since the defendant or minor has notified the prosecuting attorney and the Department of Justice of the expungement request, and that the court has not received an objection from the Department of Justice or the prosecuting attorney.

(e) (d) Upon order from the court, the Department of Justice shall destroy any specimen or sample collected from the person and any ~~criminal identification records~~ *searchable DNA database profile* pertaining to the person, unless the department determines that the person *is subject to the provisions of this chapter because of a past qualifying offense of record or is or has otherwise become obligated to submit a blood specimen or buccal swab sample as a result of a separate arrest, conviction, juvenile adjudication, or finding of guilty or not guilty by reason of insanity for an offense described in subdivision (a) of Section 296, or as a condition of a plea.*

The Department of Justice is not required to destroy ~~an autodi-~~
~~graph~~ analytical data or other ~~item~~ items obtained from a blood spec-
imen or saliva, or buccal swab sample, if evidence relating to another
person subject to the provisions of this chapter would thereby be
destroyed or otherwise compromised.

Any identification, warrant, probable cause to arrest, or arrest based upon a data bank or database match is not invalidated due to a failure to expunge or a delay in expunging records.

(d) The Department of Justice DNA Laboratory shall periodically review its files to determine whether its files contain DNA reference sample profiles from suspects as defined in subdivision (b) of Section 297 who are no longer eligible for inclusion in the data bank. The DNA profiles and samples stored in the suspect data base from a person who is a suspect in a criminal investigation shall be purged within two years of the date of the filing of the information or indictment or when the DNA laboratory receives notice that the suspect was acquitted or the charges against the suspect were dismissed, whichever occurs earlier. The notice shall include a certified copy of the court order dismissing the information or indictment, a certified copy of the defendant's fingerprints and the defendant's CI number.

(e) Notwithstanding any other provision of law, the Department of Justice DNA Laboratory is not required to expunge DNA profile or forensic identification information or destroy or return specimens, samples, or print impressions taken pursuant to this section if the duty to register under Section 290 or 457.1 is terminated.

(f) Notwithstanding any other provision of law, including Sections 17, 1203.4, and 1203.4a, a judge is not authorized to relieve a person of the separate administrative duty to provide specimens, samples, or print impressions required by this chapter if a person has been found guilty or was adjudicated a ward of the court by a trial of fact of

a qualifying offense as defined in subdivision (a) of Section 296, or was found not guilty by reason of insanity or pleads no contest to a qualifying offense as defined in subdivision (a) of Section 296.

SEC. 10. Section 299.5 of the Penal Code is amended to read:

299.5. (a) All DNA and forensic identification profiles and other identification information retained by the Department of Justice pursuant to this chapter are exempt from any law requiring disclosure of information to the public and shall be confidential except as otherwise provided in this chapter.

(b) All evidence and forensic samples containing biological material retained by the Department of Justice DNA Laboratory or other state law enforcement agency are exempt from any law requiring disclosure of information to the public or the return of biological specimens, samples, or print impressions.

(c) Non-DNA forensic identification information may be filed with the offender's file maintained by the Sex Registration Unit of the Department of Justice or in other computerized data bank or database systems maintained by the Department of Justice.

(d) The DNA and other forensic identification information retained by the Department of Justice pursuant to this chapter shall not be included in the state summary criminal history information. However, nothing in this chapter precludes law enforcement personnel from entering into a person's criminal history information or offender file maintained by the Department of Justice, the fact that the specimens, samples, and print impressions required by this chapter have or have not been collected from that person.

(e) The fact that the blood specimens, ~~saliva~~ or buccal swab samples, and print impressions required by this chapter have been received by the DNA Laboratory of the Department of Justice shall be included in the state summary criminal history information *as soon as administratively practicable*.

The full palm prints of each hand shall be filed and maintained by the Automated Latent Print Section of the Bureau of Criminal Identification and Information of the Department of Justice, and may be included in the state summary criminal history information.

(f) *DNA samples and DNA profiles* and other forensic identification information shall be released only to law enforcement agencies, including, but not limited to, parole officers of the Department of Corrections, hearing officers of the parole authority, probation officers, the Attorney General's office, district attorneys' offices, and prosecuting city attorneys' offices, ~~or to a court or administrative tribunal, except as specified in~~ *unless otherwise specifically authorized by this chapter. Dissemination of this information DNA specimens, samples, and DNA profiles and other forensic identification information* to law enforcement agencies and district attorneys' offices outside this state shall be performed in conformity with the provisions of this chapter.

(g) A defendant's DNA and other forensic identification information developed pursuant to this chapter shall be available to his or her defense counsel upon court order made pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

(h) Except as provided in subdivision (g) and in order to protect the confidentiality and privacy of database and data bank information, the Department of Justice and local public DNA laboratories shall not otherwise be compelled in a criminal or civil proceeding to provide any DNA profile or forensic identification database or data bank information or its computer database program software or structures to any person or party seeking such records or information whether by subpoena or discovery, or other procedural device or inquiry.

(e) (i) (I) (A) Any person who knowingly uses an offender specimen, sample, or DNA profile collected pursuant to this chapter for other than criminal identification or exclusion purposes, or for other than the identification of missing persons, or who knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, for other than criminal identification or exclusion purposes, or for the identification of missing persons, in violation of this chapter, shall be punished by imprisonment in a county jail not exceeding one year or by imprisonment in the state prison.

(B) Any person who, for the purpose of financial gain, knowingly uses an offender's specimen, sample, or DNA profile collected pursuant to this chapter for other than criminal identification or exclusion purposes or for the identification of missing persons or who, for the purpose of financial gain, knowingly discloses DNA or other forensic iden-

TEXT OF PROPOSED LAWS

Proposition 69 (cont.)

tification information developed pursuant to this section to an unauthorized individual or agency, for other than criminal identification or exclusion purposes or for other than the identification of missing persons, in violation of this chapter, shall, in addition to the penalty provided in subparagraph (A), be punished by a criminal fine in an amount three times that of any financial gain received or ten thousand dollars (\$10,000), whichever is greater.

(2) (A) If any employee of the Department of Justice knowingly uses ~~an offender's specimen~~, sample, or DNA profile collected pursuant to this chapter for other than criminal identification or exclusion purposes, or knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, for other than criminal identification or exclusion purposes or for other than the identification of missing persons, in violation of this chapter, the department shall be liable in civil damages to the donor of the DNA identification information in the amount of five thousand dollars (\$5,000) for each violation, plus attorney's fees and costs. In the event of multiple disclosures, the total damages available to the donor of the DNA is limited to fifty thousand dollars (\$50,000) plus attorney's fees and costs.

(B) (i) Notwithstanding any other law, this shall be the sole and exclusive remedy against the Department of Justice and its employees available to the donor of the DNA.

(ii) The Department of Justice employee disclosing DNA identification information in violation of this chapter shall be absolutely immune from civil liability under this or any other law.

(3) It is not a violation of this section for a law enforcement agency in its discretion to publicly disclose the fact of a DNA profile match, or the name of the person identified by the DNA match when this match is the basis of law enforcement's investigation, arrest, or prosecution of a particular person, or the identification of a missing or abducted person.

~~(4)~~ (j) It is not a violation of this chapter to furnish DNA or other forensic identification information of the defendant to his or her defense counsel for criminal defense purposes in compliance with discovery.

~~(4)~~ (k) It is not a violation of this section for law enforcement to release DNA and other forensic identification information developed pursuant to this chapter to a jury or grand jury, or in a document filed with a court or administrative agency, or as part of a judicial or administrative proceeding, or for this information to become part of the public transcript or record of proceedings when, in the discretion of law enforcement, disclosure is necessary because the DNA information pertains to the basis for law enforcement's identification, arrest, investigation, prosecution, or exclusion of a particular person related to the case.

~~(4)~~ (l) It is not a violation of this section to include information obtained from a file in a transcript or record of a judicial proceeding, or in any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

~~(4)~~ (m) It is not a violation of this section for the DNA Laboratory of the Department of Justice, or an organization retained as an agent of the Department of Justice, or a local public laboratory to use anonymous DNA records or criminal history information obtained pursuant to this chapter for training, research, statistical analysis of populations, or quality assurance or quality control.

~~(4)~~ It is not a violation of this section to disseminate statistical or research information obtained from the offender's file, the computerized databank system, any of the DNA laboratory's databases, or the full palm print file, provided that the subject of the file is not identified and cannot be identified from the information disclosed. All requests for statistical or research information obtained from the DNA databank shall be cataloged by the Department of Justice. Commencing January 1, 2000, the department shall submit an annual letter to the Legislature including, with respect to each request, the requester's name or agency, the purpose of the request, whether the request is related to a criminal investigation or court proceeding, whether the request was granted or denied, any reasons for denial, costs incurred or estimated of the cost of the request, and the date of the request.

~~(4)~~ (n) The Department of Justice shall make public the methodology and procedures to be used in its DNA program prior to the commencement of DNA testing in its laboratories. The Department of Justice shall review and consider on an ongoing basis the findings and results of any peer review and validation studies submitted to the department by members of the relevant scientific community experienced in

the use of DNA technology. This material shall be available to criminal defense counsel upon court order made pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

~~(4)~~ (o) In order to maintain the computer system security of the Department of Justice DNA and forensic identification database and databank program Forensic Identification Database and Data Bank Program, the computer software and database structures used by the DNA Laboratory of the Department of Justice to implement this chapter are confidential.

~~(e) Nothing in this section shall preclude a court from ordering discovery pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.~~

SEC. 11. Section 299.6 of the Penal Code is amended to read:

299.6. (a) Nothing in this chapter shall prohibit the Department of Justice, in its sole discretion, from the sharing or disseminating of population ~~data base database~~ or data bank information, DNA profile or forensic identification database or data bank information, analytical data and results generated for forensic identification database and data bank purposes, or protocol and forensic DNA analysis methods and quality assurance or quality control procedures with any of the following:

(1) Federal, state, or local law enforcement agencies.

(2) Crime laboratories, whether public or private, that serve federal, state, and local law enforcement agencies that have been approved by the Department of Justice.

(3) The attorney general's office of any state.

(4) Any state or federally authorized auditing agent or board that inspects or reviews the work of the Department of Justice DNA Laboratory for the purpose of ensuring that the laboratory meets ASCLD/LAB and FBI standards for accreditation and quality assurance standards necessary under this chapter and for the state's participation in CODIS and other national or international crime-solving networks.

~~(4)~~ (5) Any third party that the Department of Justice deems necessary to assist the department's crime laboratory with statistical analyses of the population ~~data base databases~~, or the analyses of forensic protocol, research methods, or quality control procedures, or to assist in the recovery or identification of human remains for humanitarian purposes, including identification of missing persons.

~~(b) Nothing in this chapter shall prohibit the sharing or disseminating of protocol and forensic DNA analysis methods and quality control procedures with any of the following:~~

~~(1) Federal, state, or local law enforcement agencies.~~

~~(2) Crime laboratories, whether public or private, that serve federal, state, and local law enforcement agencies that have been approved by the Department of Justice.~~

~~(3) The attorney general's office of any state.~~

~~(4) Any third party that the Department of Justice deems necessary to assist the department's crime laboratory with analyses of forensic protocol, research methods, or quality control procedures.~~

~~(e)~~ (b) The population ~~data base databases~~ and data bank banks of the DNA Laboratory of the Department of Justice may be made available to and searched by the FBI and any other agency participating in the FBI's CODIS System or any other national or international law enforcement database or data bank system.

~~(4)~~ (c) The Department of Justice may provide portions of the biological samples including blood specimens and, saliva samples, and buccal swab samples collected pursuant to this chapter to local public law enforcement DNA laboratories for identification purposes provided that the privacy provisions of this section are followed by the local public law enforcement laboratory and if each of the following conditions is met:

(1) The procedures used by the local public DNA laboratory for the handling of specimens and samples and the disclosure of results are the same as those established by the Department of Justice pursuant to Sections 297, 298, and 299.5.

(2) The methodologies and procedures used by the local public DNA laboratory for DNA or forensic identification analysis are compatible with those established used by the Department of Justice pursuant to subdivision (i) of Section 299.5, or otherwise are determined by the Department of Justice to be valid and appropriate for identification purposes.

TEXT OF PROPOSED LAWS

Proposition 69 (cont.)

(3) Only tests of value to law enforcement for identification purposes are performed and a copy of the results of the analysis are sent to the Department of Justice.

(4) All provisions of this section concerning privacy and security are followed.

(5) The local public law enforcement DNA laboratory assumes all costs of securing the specimens and samples and provides appropriate tubes, labels, and ~~instructions~~ materials necessary to secure the specimens and samples.

~~(e) (d)~~ Any local DNA laboratory that produces DNA profiles of known reference samples for inclusion within the permanent files of the state's DNA Data Bank program ~~shall comply with and be subject to all of the rules, regulations, and restrictions of this chapter and~~ shall follow the policies of the DNA Laboratory of the Department of Justice.

SEC. 12. Section 300 of the Penal Code is amended to read:

300. Nothing in this chapter shall limit or abrogate any existing authority of law enforcement officers to take, maintain, store, and utilize DNA or forensic identification markers, blood specimens, buccal swab samples, saliva samples, or thumb or palm print impressions for identification purposes.

SEC. 13. Section 300.1 of the Penal Code is amended to read:

300.1. (a) Nothing in this chapter shall be construed to restrict the authority of local law enforcement to maintain their own DNA-related databases or data banks, or to restrict the Department of Justice with respect to data banks and ~~data bases~~ databases created by other statutory authority, including, but not limited to, ~~data bases~~ databases related to fingerprints, firearms and other weapons, child abuse, domestic violence deaths, child deaths, driving offenses, missing persons, violent crime information as described in Title 12 (commencing with Section 14200) of Part 4, and criminal justice statistics permitted by Section 13305.

(b) Nothing in this chapter shall be construed to limit the authority of local or county coroners or their agents, in the course of their scientific investigation, to utilize genetic and DNA technology to inquire into and determine the circumstances, manner, and cause of death, or to employ or use outside laboratories, hospitals, or research institutions that utilize genetic and DNA technology.

SEC. 14. Section 300.2 is added to the Penal Code, to read:

300.2. Any requirement to provide saliva samples pursuant to this chapter shall be construed as a requirement to provide buccal swab samples as of the effective date of the act that added this section. However, the Department of Justice may retain and use previously collected saliva and other biological samples as part of its database and databank program and for quality control purposes in conformity with the provisions of this chapter.

SEC. IV. Supplemental Funding

SEC. 1. Section 76104.6 is added to the Government Code, to read:

76104.6. (a) 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 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, except parking offenses subject to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code. These moneys shall be taken from fines and forfeitures deposited with the county treasurer prior to any division pursuant to Section 1463 of the Penal Code. 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. The moneys of the fund shall be allocated pursuant to subdivision (b).

(b) (1) The fund moneys described in subdivision (a), together with any interest earned thereon, shall be held by the county treasurer separate from any funds subject to transfer or division pursuant to Section 1463 of the Penal Code. Deposits to the fund 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 specified herein.

(2) On the last day of each calendar quarter of the year specified in this subdivision, the county treasurer shall transfer fund moneys in the county's DNA Identification Fund to the state Controller for credit to the state's DNA Identification Fund, which is hereby established in the State Treasury, as follows:

(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.

(3) Funds remaining in the county's DNA Identification Fund shall be used only to reimburse local sheriff or other law enforcement agencies to collect DNA specimens, samples, and print impressions pursuant to this chapter; for expenditures and administrative costs made or incurred to comply with the requirements of paragraph (5) of subdivision (b) of Section 298 including the procurement of equipment and software integral to confirming that a person qualifies for entry into the Department of Justice DNA Database and Data Bank Program; and to local sheriff, police, district attorney, and regional state crime laboratories for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA crime scene samples from cases in which DNA evidence would be useful in identifying or prosecuting suspects, including the procurement of equipment and software for the processing, analysis, tracking, and storage of DNA crime scene samples from unsolved cases.

(4) The state's DNA Identification Fund shall be administered by the Department of Justice. Funds in the state's DNA Identification Fund, upon appropriation by the Legislature, shall be used by the Attorney General only to support DNA testing in the state and to offset the impacts of increased testing and shall be allocated as follows:

(A) Of the amount transferred pursuant to subparagraph (A) of paragraph (2) of subdivision (b), 90 percent to the Department of Justice DNA Laboratory, first, to comply with the requirements of Section 298.3 of the Penal Code and, second, for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA specimens and samples including the procurement of equipment and software for the processing, analysis, tracking, and storage of DNA samples and specimens obtained pursuant to the DNA and Forensic Identification Database and Databank Act, as amended, and 10 percent to the Department of Justice Information Bureau Criminal History Unit for expenditures and administrative costs that have been approved by the Chief of the Department of Justice Bureau of Forensic Services made or incurred to update equipment and software to facilitate compliance with the requirements of subdivision (e) of Section 299.5 of the Penal Code.

(B) Of the amount transferred pursuant to subparagraph (B) of paragraph (2) of subdivision (b), funds shall be allocated by the Department of Justice DNA Laboratory, first, to comply with the requirements of Section 298.3 of the Penal Code and, second, for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA specimens and samples including the procurement of equipment and software for the processing, analysis, tracking, and storage of DNA samples and specimens obtained pursuant to the DNA and Forensic Identification Database and Databank Act, as amended.

(C) Of the amount transferred pursuant to subparagraph (C) of paragraph (2) of subdivision (b), funds shall be allocated by the Department of Justice to the DNA Laboratory to comply with the requirements of Section 298.3 of the Penal Code and for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA specimens and samples including the procurement of equipment and software for the processing, analysis, tracking, and storage of DNA samples and specimens obtained pursuant to the DNA and Forensic Identification Database and Databank Act, as amended.

(c) On or before April 1 in the year following adoption of this section, and annually thereafter, the board of supervisors of each county shall submit a report to the Legislature and the Department of Justice. The report shall include the total amount of fines collected and allocated pursuant to this section, and the amounts expended by the

TEXT OF PROPOSED LAWS

Proposition 69 (cont.)

county for each program authorized pursuant to paragraph (3) of subdivision (b) of this section. The Department of Justice shall make the reports publicly available on the department's Web site.

(d) All requirements imposed on the Department of Justice pursuant to the DNA Fingerprint, Unsolved Crime and Innocence Protection Act are contingent upon the availability of funding and are limited by revenue, on a fiscal year basis, received by the Department of Justice pursuant to this section and any additional appropriation approved by the Legislature for purposes related to implementing this measure.

(e) Upon approval of the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, the Legislature shall loan the Department of Justice General Fund in the amount of \$7,000,000 for purposes of implementing that act. This loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time the loan is made. Principal and interest on the loan shall be repaid in full no later than four years from the date the loan was made and shall be repaid from revenue generated pursuant to this section.

SEC. V. General Provisions

(a) Conflicting Measures: If this measure is approved by the voters,

but superseded by any other conflicting ballot measure approved by more voters at the same election, and the conflicting ballot measure is later held invalid, it is the intent of the voters that this measure shall be self-executing and be given the full force of the law.

(b) Severability: The provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(c) Amendment: The provisions of this measure may be amended by a statute that is passed by each house of the Legislature and signed by the Governor. All amendments to this measure shall be to further the measure and shall be consistent with its purposes to enhance the use of DNA identification evidence for the purpose of accurate and expeditious crime-solving and exonerating the innocent.

(d) Supplantation: All funds distributed to state or local governmental entities pursuant to this measure shall not supplant any federal, state, or local funds that would, in the absence of this measure, be made available to support law enforcement and prosecutorial activities.

Proposition 70

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends the California Constitution and adds a section to the Government Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

THE INDIAN GAMING FAIR-SHARE REVENUE ACT
OF 2004

SECTION 1. Title

This act shall be known as the "Indian Gaming Fair-Share Revenue Act of 2004."

SEC. 2. Findings and Purpose

The people of the State of California hereby find and declare as follows:

(a) The purpose of the people of the State of California in enacting this measure is to provide a means for California Indian tribes to contribute their fair share of gaming revenues to the State of California. Both the people of California and California Indian tribal governments desire for tribes to assist in restoring financial integrity to the state by contributing an amount that is equivalent to what any private California corporation pays to the state on the net income it earns from its lawful business activities.

(b) In March 2000, the people of the State of California adopted Proposition 1A, which authorized the Governor to negotiate tribal-state gaming compacts with federally recognized Indian tribes for the operation of slot machines and certain casino games on tribal lands in California in accordance with federal law. Proposition 1A was enacted by the people in recognition of the fact that, historically, Indian tribes within the state have long suffered from high rates of unemployment and inadequate educational, housing, elderly care, and health care opportunities, while typically being located on lands that are not conducive to economic development in order to meet those needs.

(c) Since the adoption of Proposition 1A, over 50 Indian tribes have entered into tribal gaming compacts with the State of California. These compacts and the gaming facilities they authorize have assisted Indian tribes throughout the state to move towards economic self-sufficiency by providing a much-needed revenue source for various tribal purposes, including tribal government services and programs such as those that address reservation housing, elderly care, education, health care, roads, sewers, water systems, and other tribal needs. Tribal gaming has also spurred new development, has created thousands of jobs for Indians and non-Indians alike, and has had a substantial positive economic impact on the local communities in which these facilities are located.

(d) Under the existing tribal gaming compacts, Indian tribes also pay millions of dollars each year into two state special funds that are used to provide grants to local governments, to finance programs

addressing gambling addiction, to reimburse the state for the costs of regulating tribal gaming, and to share gaming revenues with other Indian tribes in the state that do not operate gaming facilities. However, because Indian tribes are sovereign governments and are exempt from most forms of taxation, they do not pay any corporate income taxes directly to the state on the profits derived from their gaming operations.

(e) Given California's current fiscal crisis, the state needs to find new ways to generate revenues for the General Fund in the State Treasury. Indian tribes want to and should do their part to assist California in meeting its budget needs by contributing to the state a fair share of the net income they receive from gaming activities in recognition of their continuing right to operate tribal gaming facilities in an economic environment free of competition from casino-style gaming on non-Indian lands. A fair share for the Indian tribes to contribute to the state is an amount that is equivalent to the amount of corporate taxes that a private California corporation pays to the state on the net income it earns from its lawful business activities.

(f) Accordingly, in order to provide additional revenues to the State of California in this time of fiscal crisis, this measure authorizes and requires the Governor to enter into new or amended tribal gaming compacts under which the Indian tribes agree to contribute to the state a fair share of the net income derived from their gaming activities in exchange for the continued exclusive right to operate casino-style gaming facilities in California. In addition, in order to maximize revenues for the state and to permit the free market to determine the number and type of casino games and devices that will exist on tribal lands, this measure requires these new or amended compacts to allow each tribal government to choose the number and size of the gaming facilities it operates, and the types of games offered, that it believes will maximize the tribe's income, as long as the facilities are restricted to and are located in those areas that have been designated by both the State of California and the United States government as tribal lands. Under the new or amended compacts authorized by this measure, Indian tribes must also prepare environmental impact reports analyzing the off-reservation impacts of any proposed new or expanded gaming facilities, and they must consult with the public and local government officials to develop a good-faith plan to mitigate any significant adverse environmental impacts.

SEC. 3. Section 19 of Article IV of the California Constitution is amended to read:

SEC. 19. (a) The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State.

(b) The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results.

(c) Notwithstanding subdivision (a), the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes.

(d) Notwithstanding subdivision (a), there is authorized the establishment of a California State Lottery.