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AB-1584 Criminal law: DNA collection: minors. (2017-2018)

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Assembly Bill No. 1584

CHAPTER 745

An act to add Section 625.4 to the Welfare and Institutions Code, relating to criminal law.

[Approved by Governor September 26, 2018. Filed with Secretary of State September 26, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1584, Gonzalez Fletcher. Criminal law: DNA collection: minors.

Existing law, as amended by the DNA Fingerprint, Unsolved Crime and Innocence Protection Act (the DNA Act), prescribes the circumstances under which DNA may be collected from a qualifying person for inclusion in the statewide DNA database, as specified.

Unless required under the DNA Act or pursuant to a court order or search warrant, this bill would prohibit a law enforcement entity from collecting a buccal swab sample or any other biological sample from a minor without first obtaining written consent of the minor and approval of the minor's consent by a parent, legal guardian, or attorney, as specified.

The bill would also prohibit, except as otherwise expressly authorized by law, a minor's voluntarily given DNA from being searched, analyzed, or compared to DNA or profiles related to crimes other than the one for which it was taken.

The bill would provide a procedure for a minor to have a voluntary sample expunged.

This bill would also create a civil cause of action against a local law enforcement agency that is found to have a pattern and practice of collecting voluntary samples in violation of the bill's provisions.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 625.4 is added to the Welfare and Institutions Code, to read:

625.4. (a) A law enforcement officer, employee of a law enforcement agency, or any agent thereof, shall not request that a voluntary DNA reference sample be collected directly from the person of a minor unless all of the following conditions are met:

(1) The minor consents in writing, after being verbally informed of the purpose and manner of the collection, the right to refuse consent, the right to sample expungement, and the right to consult with an attorney, parent, or legal guardian prior to providing consent.

(2) A specific parent or legal guardian identified by the minor, or an attorney representing the minor, is contacted, is provided the information specified in paragraph (1), is allowed to privately consult by telephone or in person with the minor, and, after

that consultation, concurs with the minor's decision to consent.

(3) Local law enforcement provides the minor with a form for requesting expungement of the voluntary DNA buccal swab sample, if a sample is consented to and collected pursuant to this section.

(b) Nothing in subdivision (a) is intended to create a right to the appointment of counsel.

(c) The detention of a minor that occurs for the purpose of requesting a voluntary DNA reference sample directly from the person of that minor pursuant to this section shall not be unreasonably extended solely for the purpose of contacting a parent, legal guardian, or attorney pursuant to paragraph (2) of subdivision (a), if a parent, legal guardian, or attorney cannot be reached after reasonable attempts have been made.

(d) The court shall, in adjudicating the admissibility of a voluntary DNA reference sample taken directly from a minor pursuant to this section, consider the effect of any failure to comply with this section.

(e) The law enforcement agency obtaining a voluntary DNA reference sample directly from the person of a minor pursuant to this section shall determine within two years whether the person remains a suspect in a criminal investigation. If, within two years, the voluntary DNA reference sample that is collected pursuant to this section is not found to implicate the minor as a suspect in a criminal offense, the local law enforcement agency shall promptly expunge the sample and the DNA profile information from that voluntary DNA reference sample from the databases or data banks into which they have been entered.

(f) If the minor requests expungement of a voluntary DNA reference sample collected directly from the person of a minor pursuant to this section, the local law enforcement agency shall make reasonable efforts to promptly expunge the sample and the DNA profile information from that voluntary DNA reference sample from all DNA databases or data banks unless the voluntary DNA reference sample has implicated the minor as a suspect in a criminal investigation. If expungement occurs, law enforcement shall make reasonable efforts to notify the minor when the minor's DNA sample and DNA profile information have been expunged.

(g) A voluntary DNA reference sample taken directly from the person of a minor pursuant to this section and the DNA profile information from that voluntary DNA reference sample shall not be searched, analyzed, or compared to DNA samples or profiles in the investigation of crimes other than the investigation or investigations for which it was taken, unless that additional use is permitted by a court order.

(h) Any local law enforcement agency that is found by clear and convincing evidence to maintain a pattern and practice of collecting voluntary DNA reference samples directly from the person of a minor in violation of this section after January 1, 2019, shall be liable to each minor whose sample was inappropriately collected in the amount of five thousand dollars (\$5,000) for each violation, plus attorney's fees and costs.

(i) The scope of this section is limited to the collection of voluntary DNA reference samples directly from the person of minors, and, as such, subdivisions (a) to (h), inclusive have no application to the collection and use of DNA under other circumstances, including, but not limited to, any of the following:

(1) The sample collection or use is expressly authorized pursuant to the state's DNA Act as set forth in the DNA and Forensic Identification Database and Data Bank Act of 1998, as amended, (Chapter 6 (commencing with Section 295) of Title 9 of Part 1 of the Penal Code.

(2) A DNA reference sample collection and analysis that occurs pursuant to a valid search warrant or court order or exigent circumstances.

(3) A DNA reference sample collection that occurs in the investigation or identification of a missing or abducted minor.

(4) Any DNA reference sample collected from a juvenile victim or suspected perpetrator of a sexual assault or other crime as authorized by law.

(5) Any DNA sample that is collected as evidence in a criminal investigation, such as evidence from a crime scene or an abandoned sample.