

RESOLUTION 03-10-2007

DIGEST

Criminal Procedure: DNA Testing Backlogs

Recommends that the Legislature enact the California Commission on the Fair Administration of Justice's "Emergency Report and Recommendations Regarding DNA Testing Backlogs."

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution recommends that the Legislature enact the California Commission on the Fair Administration of Justice's "Emergency Report and Recommendations Regarding DNA Testing Backlogs." This resolution should be disapproved because it does not meet the requirements of Conference Rules, article II, section 9.

Proposition 69 calls for DNA samples from every adult arrested or charged with any felony offense beginning in 2009. Therefore, immediate attention to the current backlog is vital so as not to compound the issue further in 2009.

The CCFAJ Report and Recommendations are jointly authored and supported by those often at odds in the criminal justice system: prosecutors, defense lawyers, law enforcement agencies, and public policy advocates. The Conference should join in the support for the Commission's recommendations as clearly a notable effort to improve the administration of justice in California.

The objectives of the Commission's recommendations are laudable. The reform measures include, *inter alia*, analysis of staffing needs, budget appropriations, and best practices for the processing of DNA evidence. The failure to promptly test and catalog DNA profiles collected pursuant to Proposition 69, the "DNA Fingerprint, Unsolved Crime and Innocence Protection Act," negatively impacts the efforts of law enforcement. If an offender's DNA is obtained from a crime scene but processing of it is delayed, possible apprehension of the offender is also delayed and the potential for more crimes enhanced. Conversely, the potential exoneration of a suspect by finding a match to someone else will also be delayed. Especially problematic is that the potentially exculpatory evidence is exclusively in the hands of the prosecution, giving rise to constitutional imperatives.

This resolution, however, does not propose any specific legislative proposal for the Conference to consider. Under article II, section 9 of the Conference rules, "[e]very resolution shall describe in detail the action proposed." Also, "[w]hen a resolution proposes a change in the law (either by amending or deleting an existing statute, rule, order or regulation, or by enacting such law for the first time), it shall contain the full text of the proposed amendment or new law, showing the words to be added or deleted." Because the resolution does not propose specific statutory changes and does not describe in detail what action is proposed, it cannot be approved.

TEXT OF RESOLUTION

RESOLVED that the Conference of the Delegates of California Bar Associations urges the California Senate and Assembly to incorporate into legislation the reform measures recommended by the California Commission on the Fair Administration of Justice (“CCFAJ”) in its “Emergency Report and Recommendations Regarding DNA Testing Backlogs” dated February 20, 2007, and to pass such legislation; and

RESOLVED FURTHER that the Conference of Delegates of California Bar Associations urges the Governor to sign such legislation into law.

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: California voters adopted Proposition 69, the “DNA Fingerprint, Unsolved Crime and Innocence Protection Act,” by initiative at the November, 2004 general election, by a 62% margin. Proposition 69 mandates a vast expansion of the statewide DNA database and data bank program to solve crimes, to aid in the identification of missing and unidentified persons, and to exonerate persons wrongly suspected or accused of crime. Proposition 69 requires the taking of buccal swab samples from any person convicted of any felony offense, as well as any person arrested for or charged with a homicide or sexual offense. Beginning in 2009, Proposition 69 will expand and require the submission of samples for adults arrested or charged with any felony offense.

CCFAJ hearings have produced testimony that, as of January 31, 2007, the California Department of Justice had received 895,409 samples, but had only uploaded profiles for 736,863, leaving a backlog of 158,546. The backlog will be reduced below 60,000 by June 30, 2007, but in each of the next three years, the DOJ anticipates receiving 240,000 samples per year. In 2009, the DOJ estimates the number will jump another 160,000, to 400,000 per year.

This Resolution: Supports legislation to implement the CCFAJ’s “Emergency Report and Recommendations Regarding DNA Testing Backlogs” dated February 20, 2007. The Emergency Report And Recommendations can be found at: <http://www.ccfaj.org/documents/reports/problems/official/Report%20on%20DNA%20Backlogs.pdf>

The Problem: The current backlog in the processing of DNA samples taken from suspects arrested for violent felonies, and the delays in testing of rape kits and other DNA samples collected during criminal investigations, is a problem in need of immediate attention.

Backlogs and delays in the entry of offender DNA profiles into the databank have a serious impact upon the work of all law enforcement agencies in California. If an offender’s profile is not yet in the databank, a forensic sample from a crime scene entered into the databank by any crime laboratory in the state will not produce a match, leaving the offender free to commit additional crimes. The potential exoneration of a suspect by finding a match to someone else will

also be foreclosed. The DNA data bank is already producing “cold hits” at a remarkable rate, identifying perpetrators that had remained free for many years. Frequently, when an innocent person is exonerated by means of DNA testing, the testing also produces a “cold hit” of another suspect who remained at large to victimize others. Further, delays of six months or more have become the norm at local crime laboratories for analysis of rape kits and other DNA samples collected during criminal investigations. The consequences of such delays were described to the CCFAJ and include horror stories including the delayed “cold hit” identification of a rapist who had attacked at least two other victims, one a child, during the period of delay.

IMPACT STATEMENT:

This resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Frank Z. Leidman, Law Offices of Frank Z. Leidman, 473 Jackson Street, Third Floor, San Francisco, CA 94111, Cellular Telephone: (415) 308-1590; Email: Frank@LeidmanLaw.com

RESPONSIBLE FLOOR DELEGATE: Frank Z. Leidman