



Honorable Edmund G. Brown Jr.
Governor, State of California
State Capitol, First Floor
Sacramento, CA 95814
ATTN: Legislative Unit

September 5, 2018

Re: AB 1584 (Gonzalez Fletcher)— REQUEST FOR SIGNATURE

Dear Governor Brown:

I write today on behalf of the Electronic Frontier Foundation (EFF) to request your signature on Assembly Bill 1584, authored by Assemblymember Gonzalez Fletcher. AB 1584 mandates that in order to collect a DNA sample from the person of a minor when not required by existing law, law enforcement must obtain a court order, a search warrant, or the written consent of both the minor and the minor's parent or legal guardian.

EFF is a non-profit based in San Francisco that protects civil liberties in the digital world. Founded in 1990, EFF has over 38,000 members, including thousands in California. EFF has a special familiarity with and interest in privacy issues that arise with new technologies and has participated as amicus curiae in key court cases addressing the constitutionality of DNA testing of pretrial arrestees.

EFF strongly supports AB 1584. As news media reported last year,¹ some California law enforcement agencies have been collecting DNA from kids without any legal process and without their parents' knowledge and consent. AB 1584 is necessary to prevent the collection of DNA from minors except under extremely limited circumstances. The legislation fixes a legal loophole used by these agencies to subvert specific restrictions in Proposition 69 on collecting DNA from minors.²

Under existing law, DNA seized for inclusion in California's statewide DNA database can be collected from minors only in narrow, and serious, circumstances: after they've been convicted of or pled guilty to a felony, or if they are required to register as a sex offender or in a court-mandated sex offender treatment program. *See* Cal. Penal Code § 296. But Proposition 69 only governs DNA seized for inclusion in the statewide database. Because the law allows for the maintenance of local databases that are not governed by Proposition 69, samples collected by local law enforcement and submitted to only local databases—and not to the statewide database and the California Department of Justice—are not subject to Proposition 69's limitations on collection from minors.

¹ Kelly Davis, "SDPD Finds a Way Around State Law Limiting DNA Collection From Juveniles," *Voice of San Diego* (Feb. 15, 2017), <https://www.voiceofsandiego.org/topics/public-safety/sdpd-has-found-a-way-around-state-law-forbidding-dna-collections-from-juveniles/>.

² EFF, "San Diego Police Target African American Children for Unlawful DNA Collection," *Deeplinks* (Feb, 15, 2017), <https://www.eff.org/deeplinks/2017/02/san-diego-police-targets-african-american-children-unlawful-dna-collection>.

This has allowed local law enforcement to collect DNA samples from minors beyond the narrow circumstances outlined in Proposition 69. The San Diego Police Department, for example, instituted a policy of collecting samples from minors for “investigative purposes” based on a signed consent form that was used for both minors and adults alike, without any parental notification or consent.³

This practice violates the intent of Proposition 69. And the assumption that children can give valid consent upon arrest is unreasonable.

There is a lawsuit currently pending in a federal district court in the Southern District of California challenging the San Diego Police Department’s policy on the collection of DNA samples from minors.⁴ The lawsuit involves an incident in which five teen boys were detained and pressured by officers to sign consent forms for the collection of DNA samples. The plaintiffs in the case argue that by failing to require notification to a parent or guardian, the department’s policy violates the privacy rights, due process rights, and familial association rights of both the minors and their parents or guardians.

AB 1584 will help protect California kids and strengthen the intent of Proposition 69 by closing this legal loophole and creating a higher standard for local law enforcement when collecting DNA samples from minors. We strongly support AB 1584 and believe the bill should become law, and we respectfully urge your signature on this legislation.

Please do not hesitate to contact me to discuss any questions or concerns you may have about the bill. I can be reached at jamie@eff.org or by phone at 415-436-9333 x164.

Sincerely,



Jamie Williams
Staff Attorney
Electronic Frontier Foundation

cc: The California Department of Justice
Assemblymember Lorena Gonzalez Fletcher

³ San Diego Police Department Order, Collection of DNA Mouth Swabs from Juveniles (June 12, 2009), <https://www.voiceofsandiego.org/wp-content/uploads/2017/02/DNA-SWAB-Juvenile.pdf>.

⁴ See *P.D. et al v. City of San Diego et al*, 3:17-cv-00296-H-BGS (S.D. Cal, filed Feb. 15, 2017).