



January 5, 2018

VIA EMAIL

The Honorable Reginald Jones Sawyer
Chair, Assembly Public Safety Committee
1020 N Street, Room 111
Sacramento, CA 95814

RE: AB 1584 (Gonzalez Fletcher): Consent for DNA Collection from Minors — SUPPORT

Dear Assembly Member Jones Sawyer:

I am writing on behalf of the Electronic Frontier Foundation (EFF)¹ in support of Assembly Bill 1584. AB 1584 would mandate that in order to collect a DNA sample from 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 strongly supports AB 1584. As news media reported last year,² 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. It would fix a legal loophole used by these agencies to subvert specific restrictions in Proposition 69 on collecting DNA from minors.³

Under existing law, DNA can be collected from minors only in narrow, and serious, circumstances: after they've been convicted of or plead 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

¹ EFF is a non-profit civil liberties organization with over 40,000 active donors and dues-paying members that works to protect fundamental liberties in the digital world. 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.

² 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/>.

³ 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>.

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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.

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, currently collects samples for “investigative purposes” based on a signed consent form that is used for both minors and adults alike and that does not require parental notification or consent.⁴

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.⁵ 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. I can be reached at 415-436-9333 x164 or jamie@eff.org if you have any questions.

Sincerely,



Jamie Williams
Staff Attorney
Electronic Frontier Foundation

CC: Laurel Brodzinsky, Office of Assemblywoman Gonzalez Fletcher
Arnell Rusanganwa, Committee Assistant, Committee on Public Safety

⁴ San Diego Police Department Order, Collection of DNA Mouth Swabs from Juveniles (06/12/2009), https://www.eff.org/files/2017/02/14/pr_16-1382_department_order_09.14_dna_swab_juvenile.pdf.

⁵ See *supra*, note 2.