

# CALIFORNIA COURT VOIDS NEW DNA-CRIME LAW

from The Privacy Times

A California appeals court has voided a voter-approved measure requiring every adult arrested on a felony charge to submit a DNA sample.

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In a 3-0 vote, the 1st District Court of Appeal in San Francisco said Proposition 69 amounted to unconstitutional, warrantless searches of arrestees. More than 1.6 million samples have been taken following the law's 2009 implementation.

"What the DNA Act authorizes is the warrantless and suspicionless search of individuals, before a judicial determination of probable cause to believe they have committed a crime, for evidence of crime unrelated to that for which they have been arrested," the court wrote. "The United States Supreme Court has never permitted suspicionless searches aimed at uncovering evidence of crime outside the context of convicted offenders."

The California appeals court distanced itself from other rulings on the issue, holding that DNA collection from arrestees' inner cheeks is not the same as taking fingerprints. About half of those arrested in California are convicted.

"The question this case presents, which is increasingly presented to the courts of this state and nation, is the extent to which technology can be permitted to diminish the privacy guaranteed by the Fourth Amendment," the court wrote.

California argued that DNA evidence is an effective crime-solving tool. But the court said that was not the issue.

"Even if DNA testing of arrestees was demonstrably valuable to law enforcement, the effectiveness of a crime fighting technology does not render it constitutional," the court wrote.

California Attorney General Kamala Harris did not immediately indicate whether she would appeal the loss to the California Supreme Court.

Nearly every federal and state court to hear the issue, however, has upheld the collection of DNA samples from arrestees. Legal battles over the constitutionality of DNA collection for those convicted of crimes has long been resolved based on rulings that convicts have diminished constitutional rights to privacy.

California's high court is not obligated to follow federal rulings upholding the constitutionality of taking DNA from

arrestees. That is because the States may afford its citizens more constitutional protections than does the federal government. California has one of the strongest State Constitutional Right to Privacy.

California's DNA samples, like those from other states, are made available to law enforcement nationwide. Those arrested for federal crimes are also required to submit a DNA sample. According to the most recent data available, at the end of 2010, California's DNA database held 1,680,038 samples that were taken under the law. That DNA led to 15,550 matches related to other crimes.

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