

DNA Collection Bill Stays Alive Burton May back a Measure Allowing Samples to Be Taken Forcibly from Felons.

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By Kevin Yamamura

State Senate leader John Burton on Tuesday demanded changes in a bill enabling law enforcement to forcibly obtain DNA samples from violent felons, but said the measure may ultimately win his approval.

SB 1242 would allow the state Department of Corrections and other law enforcement to use "reasonable force" to obtain DNA for a statewide database created in 1998. It also would protect correctional officers who collect DNA from liability.

Prosecutors and crime victims said Tuesday the proposal will help crack unsolved cases by linking convicted felons serving time for other violent offenses to DNA evidence.

As expected, Burton opposed the bill in the Senate Committee on Public Safety, objecting to the immunity provision, a lack of uniform procedures related to DNA collection and what he considers an ambiguous definition for "reasonable force."

But he surprised proponents by delaying the committee's vote, helping the bill stay alive.

"I'm of the opinion that we could come out with a satisfactory bill," Burton said.

A 1998 law created a DNA databank within the state Department of Justice, allowing the state to collect blood and saliva samples from convicted violent felons, including murderers, kidnappers and registered sex offenders. Since then, more than 200,000 specimens have been obtained statewide.

State correctional officers are required to have a court order before using "reasonable force" to obtain DNA samples. Most prisoners provide specimens when asked, but at least 900 have refused, said Terry Thornton, a corrections spokeswoman.

"Each of these refusals could provide the key to unlock unsolved murders or rapes in our state, but the prisoners are refusing to budge, and there is nothing the state of California can do," said Senate Republican leader Jim Brulte of Rancho Cucamonga, the author of the bill.

The Department of Corrections already has proposed regulations that enable officers to collect DNA without a court order, but some state officials fear that the new rules would be subject to legal challenge without SB 1242.

Bruce Harrington, an Orange County attorney, recounted Tuesday the August 1980 murders of his brother and sister-in-law in Laguna Niguel.

The case remains unsolved. But in 2000, investigators used DNA evidence to link the Harrington murders and other Southern California killings to the so-called East Area Rapist, believed responsible for 36 incidents in Sacramento County from 1976 to 1978.

The killer remains unknown, and the crimes stopped in 1986, leading some to believe the suspect was jailed for another crime years ago. Harrington said Tuesday he believes forcible DNA collection could catch the culprit.

Tuesday's hearing reached an emotional peak when Harrington and Burton exchanged words during public testimony.

"All I see and hear from Senator Burton and his staff and his cronies is a buzz saw of opposition focused more on the rights of prisoners than the rights of victims and their families," Harrington said, staring directly at the Senate leader.

Burton responded, his voice rising in anger.

"First of all, I had two of my best friends murdered, my mother was attacked and almost raped in 1976 at knifepoint, and I resent the fact that you're telling me I love criminals. I resent that," he said, referring to the 1978 deaths of former San Francisco Mayor George Moscone and U.S. Rep. Leo Ryan.

"The proof, Mr. Burton, will be in the vote on this bill," Harrington said.

"No, the proof will be in what happens," Burton said.

The public safety committee has set a second hearing on SB 1242 for April 30. Should the measure pass both houses of the Legislature, it would require Gov. Gray Davis' signature. The Democratic governor "is supportive of the idea of Brulte's bill but he wants more information on what they mean by reasonable force," said Russell Lopez, a Davis spokesman.