



County Executive Office
Memorandum

S25A

March 2, 2007

To: Chris Norby, Chairman
From: Thomas G. Mauk, County Executive Officer
Subject: Exception to the Rule 21

The County Executive Office is requesting a supplemental for the March 6, 2007 Board Hearing Meeting.

Agency: District Attorney
Subject: Disclosure Limitations and Confidentiality of District Attorney's DNA Database.
District All

Reason for supplemental: A Public Hearing is needed to expedite consideration of an Ordinance scheduled for March 27, 2007.

Concur:


Chris Norby, Chairman Board of Supervisors

cc: Rob Richardson
Assistant to the County Executive Officer



**SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT**

Agenda Item

(Clerk's Use Only)

S25A

ASR Control

MEETING DATE: 03/06/07
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All
SUBMITTING AGENCY/DEPARTMENT: District Attorney
DEPARTMENT CONTACT PERSON(S): Lisa Bohan-Johnston 714-347-8443

SUBJECT: Disclosure Limitations and Confidentiality of District Attorney's DNA Database Information Ordinance

| CEO CONCUR | COUNTY COUNSEL REVIEW | CLERK OF THE BOARD |
|--------------------|--|--------------------|
| <i>[Signature]</i> | <i>Ordinance Approved as to Form MAH</i> | Discussion |

Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** N/A
Staffing Impact: No **# of Positions:** **Sole Source:** N/A
Current Fiscal Year Revenue: N/A
Funding Source: N/A

Prior Board Action: Minute Order dated January 23, 2007

RECOMMENDED ACTION(S)

1. Read the title of the Disclosure Limitations and Confidentiality of Orange County District Attorney's DNA Database Information Ordinance.
2. Order further reading of the Disclosure Limitations and Confidentiality of Orange County District Attorney's DNA Database Information Ordinance be waived.
3. Schedule Public Hearing for the March 27, 2007 Board of Supervisor's meeting.
4. Direct the Clerk of the Board to publish notices to the public.
5. Direct Ordinance be placed on the Agenda for the March 27, 2007 Board of Supervisor's meeting for second reading and adoption.
6. At the March 27, 2007 Board meeting, conduct public hearing, consider matter and adopt Ordinance.

SUMMARY:

The Office of the District Attorney requests adoption of the Disclosure Limitations and Confidentiality of Orange County District Attorney's DNA Database Information Ordinance. The Ordinance provides safeguards to protect and maintain the privacy of individuals who have contributed samples for inclusion into the Orange County DNA Database.

BACKGROUND INFORMATION:

DNA analysis has increasingly become a powerful tool in solving crime and preventing criminals from repeat offenses through early identification. Moreover, law enforcement agencies can use DNA to narrow the scope of potential suspects through DNA profiles. On January 23, 2007 your Honorable Board approved Price Agreement N1000008404 with Forensic Science Service to provide software to host a local DNA database.

The proposed Ordinance limits the use of this data to specific law enforcement purposes. It restricts both access and use of DNA samples and DNA profiles and other forensic identification information to law enforcement purposes only. Furthermore, the Ordinance provides that an unauthorized individual or agency accessing the DNA database data for other than criminal identification or exclusion purposes or the identification of missing persons, in violation of this ordinance is guilty of a misdemeanor punishable by imprisonment in the county jail and/or fines.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Disclosure Limitations and Confidentiality of Orange County District Attorney's DNA Database Information Ordinance (Proposed)

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA
ADOPTING DIVISION 17, ARTICLE 1, OF TITLE 3
OF THE CODIFIED ORDINANCES OF THE COUNTY OF ORANGE
PERTAINING TO THE DNA DATABASE OF THE
ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

The Board of Supervisors of the County of Orange, California, ordains as follows:

SECTION 1. Division 17, Article 1 is hereby added to Title 3 of the Codified Ordinances of the County of Orange, to read as follows:

ARTICLE 1. DISCLOSURE LIMITATIONS AND
CONFIDENTIALITY OF ORANGE COUNTY
DISTRICT ATTORNEY'S DNA DATABASE
INFORMATION

Sec. 3-17-1. Definitions.

The following terms as used in this Article shall, unless the context clearly indicates otherwise, have the respective meanings herein set forth:

Agent of the District Attorney means any person or private or public entity or organization retained to assist the Orange County District Attorney in the performance of any of the District Attorney's duties.

District Attorney means the Orange County District Attorney.

DNA means Deoxyribonucleic acid.

DNA Database means any DNA and forensic identification database or data bank maintained by the District Attorney that contains (a) DNA specimens or samples; (b) DNA profiles or other forensic identification information; or (c) analytical data or results pertaining to or generated from DNA specimens or samples, DNA profiles or other forensic identification information

Database Information means the following material contained in or relating to the DNA Database: (a) DNA specimens or samples; (b) DNA profiles and other forensic identification information; (c) analytical data or results pertaining to or generated from DNA specimens or samples, DNA profiles or other forensic identification information; and (d) computer program software and structures relating to the DNA Database.

Sec. 3-17-2. Disclosure Limitation for DNA Information.

(a) If the District Attorney maintains a DNA Database, all Database Information shall be confidential, in order to protect the privacy of individuals and the integrity and computer system security of the DNA Database. Database Information will be released only in accordance with this Article.

(b) Except as otherwise provided in this Article, neither the District Attorney nor any Agent of the District Attorney shall voluntarily provide any Database Information to any person or entity seeking such records or information. The District Attorney and all Agents of the District Attorney shall employ all necessary, appropriate, and lawful means to protect the confidentiality of Database Information. Except as otherwise provided in this Article, no Database Information shall be provided to any person or entity unless compelled by an order issued by a court of competent jurisdiction.

Sec. 3-17-3. Penalties for Violation.

(a) Any person who, for purposes other than financial gain, knowingly uses a DNA reference specimen, sample or DNA profile collected for inclusion in the DNA Database for any purpose other than criminal identification or exclusion purposes, or for other than the identification of missing persons, or who knowingly discloses Database Information to an unauthorized individual or agency, for other than criminal identification or exclusion purposes or for the identification of missing persons, in violation of this Article, is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1000), or by both.

(b) Any person who, for the purpose of financial gain, knowingly uses a DNA reference specimen, sample or DNA profile collected for inclusion in the DNA Database for any purpose other than criminal identification or exclusion purposes or for the identification of missing persons or who, for the purpose of financial gain, knowingly discloses Database Information to an unauthorized individual or agency, for other than criminal identification or exclusion purposes or for other than the identification of missing persons, in violation of this Article, shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months and be punished by a criminal fine in an amount three times that of any financial gain received or ten thousand dollars (\$10,000), whichever is greater.

Sec. 3-17-4. Exceptions; Authorized Disclosures of DNA Information

(a) It is not a violation of this Article for a law enforcement agency in its discretion to publicly disclose the name of the person identified through a DNA database search when this comparison is the basis of law enforcement's investigation, arrest or prosecution of a particular person, or the identification of a missing or abducted person.

(b) It is not a violation of this Article for the District Attorney to furnish DNA or other forensic identification information of a defendant to his or her defense counsel for criminal defense purposes in compliance with the procedures for discovery in criminal cases.

(c) It is not a violation of this Article to include Database Information in a transcript or record of a judicial proceeding, or in any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(d) It is not a violation of this Article for the District Attorney or an Agent of the District Attorney acting with authorization of the District Attorney to use anonymous DNA records or criminal history information for training, research, statistical analysis of populations, or quality assurance or quality control.

(e) The District Attorney, in its sole discretion, may release or disseminate to the following persons and agencies any Database Information, information about DNA Database protocols and forensic DNA analysis methods, and information about DNA Database quality assurance and quality control procedures, when needed for law enforcement investigation purposes, or for law enforcement forensic database and data bank identification purposes:

(1) Federal, state, local or international law enforcement agencies and peace officers, including, but not limited to, parole officers of the California Department of Corrections, hearing officers of a parole authority, and probation officers.

(2) Crime laboratories, whether public or private that serve federal, state, local or international law enforcement agencies.

(3) The attorney general's office of any state or prosecutorial offices of any country, state, county or city.

(4) Any state, federally or internationally authorized auditing agent or board, including accreditation organizations approved by the National DNA Index System (NDIS) board, that inspect or review the work of forensic DNA laboratories for the purpose of ensuring that the laboratories meet state, federal or international requirements necessary for participation in the Combined DNA Index System (CODIS) and other national or international crime-solving networks.

(5) Any third party that the District Attorney deems necessary to assist the District Attorney with statistical analyses of Database Information, or the analyses of forensic protocol, research methods, or quality control procedures, or to assist in the recovery or identification of human remains for humanitarian purposes, including identification of missing persons.