



JUDICIAL COUNCIL OF CALIFORNIA

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May 12, 2015

Hon. Mike Gatto
Member of the Assembly
State Capitol, Room 3152
Sacramento, California 95814

Subject: AB 84 (Gatto), as amended April 23, 2015 – Oppose
Hearing Assembly Appropriations Committee – May 13, 2015

Dear Assembly Member Gatto:

The Judicial Council opposes AB 84 because the council believes that the bill is premature in making many of its provisions contingent on the California Supreme Court's pending ruling in *People v. Buza* (214) 231 Cal.App. 4th 1446, review granted February 18, 2015, S223698, and thus will lead to problems in the administration of justice.

In *Buza*, the lower court held that certain provisions of the DNA Fingerprint, Unsolved Crime and Innocence Protection Act (Proposition 69, approved by the voters at the November 2, 2004, general election) (the DNA Act) to the extent they require felony arrestees to submit to a DNA sample for law enforcement analysis and inclusion in the state and federal DNA databases, without independent suspicion, a warrant, or a judicial or grand jury determination of probable cause, unreasonably intrudes on the arrestee's expectation of privacy and is invalid under the California Constitution. AB 84, among other things, requires that DNA samples obtained during an arrest on a felony not be sent to Department of Justice for analysis until after a judicial determination of probable cause, if the a Supreme Court upholds *Buza*. Further, AB 84 requires, if the California Supreme Court upholds *Buza*, that a DNA specimen and sample be destroyed

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and the searchable database profile expunged from the database without the requirement of an application to the Department of Justice. Also contingent on the Supreme Court upholding *Buza*, AB 84 established procedures for a person's DNA sample and searchable database profile to be expunged if the case is dismissed or the accused is acquitted, or otherwise exonerated, and the person has no past qualifying offense, without the requirement of an application from the person.

The Judicial Council believes that AB 84 is flawed because it is written to make several of its provisions contingent on the Supreme Court's ruling, with the underlying assumption that the Supreme Court will adopt the *reasoning* of the lower court in reaching its holding. That assumption may prove to be incorrect and, as a result, AB 84 will lead to confusion and inconsistencies among the courts about how AB 84 applies to a particular circumstance. The Supreme Court's opinion could take a variety of permutations, including overturning *Buza*, upholding only part of the appellate court's opinion, or upholding the lower court's decision but differently analyzing the issues. Once the Supreme Court issues its ruling, courts will be called on to interpret and apply the provisions of AB 84 in a manner that is consistent with the both that ruling and AB 84, thus courts are likely to have differing views about how AB 84 applies to a particular circumstance as well as whether particular provisions of AB 84 are operative or inoperative based on the reasoning of the Supreme Court. This is likely even if the Supreme Court decides to uphold the lower court's holding because the AB 84 was drafted without the benefit of the Supreme Court's reasoning.

For these reasons, the council believes that AB 84 is premature and the Judicial Council opposes AB 84.

Sincerely,



Sharon Reilly
Senior Attorney

SR/yc-s

cc: Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California