

## California court will reconsider law enforcement DNA collection technique

Written by Australian Business

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September 27, 2013 /**24-7PressRelease**/ -- California law currently allows law enforcement officers to collect a DNA sample of people arrested on suspicion of criminal activity through a swab test of a suspect's mouth. Law enforcement may use this method to check the criminal history of people arrested on suspicion of a [violent crime](#)

However, civil rights advocates, including the American Civil Liberties Union, question whether this law violates the Fourth Amendment of the U.S. Constitution preventing unreasonable search and seizure by law enforcement officials. They argue that U.S. citizens have the right to a certain amount of privacy regarding their DNA collection from law enforcement.

The 9th U.S. Circuit Court of Appeals was considering whether the California law was constitutional when the United States Supreme Court issued its own ruling in a case arising from Maryland. In a 5-4 decision, the nation's highest court ruled that a similar Maryland law does not violate the U.S. Constitution.

Because the case made it to the nation's highest court before the 9th Circuit could issue a ruling, it held off on the case until the Supreme Court case was finished. The 9th Circuit is now ready to issue its own opinion on the issue. In August, the 9th U.S. Circuit Court of Appeals set arguments for Dec. 9 for a panel of 11 judges.

The Supreme Court in June upheld the Maryland DNA collection law, as Justice Anthony Kennedy, who wrote the majority opinion in the 5-4 decision, likened a DNA swab as a "routine administrative issue" like booking a suspect or taking his or her fingerprints.

After the decision, California Attorney General Kamala Harris argued that the Maryland ruling should end the California case questioning its own state law. However, the ACLU and others are arguing that California's law is broader than Maryland's and does not even require an arrestee to be charged at any point to be subjected to a DNA swab. The 9th Circuit Court of Appeals has agreed to the extent it should at least hear the case made before it.

### Search and seizure issues at federal and state level

Whether a search or seizure violates state or federal law is a complex topic that spans a variety of criminal cases. Each criminal case is unique and the outcome can turn on any number of factors, DNA collection not the least of them. People charged with criminal actions in California should consult with an experienced criminal defense attorney to discuss their situation and

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ensure that their constitutional rights are upheld.

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