

ASSEMBLY BILL NO. 92—ASSEMBLYMEN ANDERSON,
MUNFORD, HOGAN, KIHUEN, SMITH AND WEBER

FEBRUARY 12, 2007

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing genetic marker testing of certain convicted persons. (BDR 14-805)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

~

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets **[omitted-material]** is material to be omitted.

AN ACT relating to criminal procedure; expanding the crimes for which a convicted person is required to submit a biological specimen to be used for genetic marker analysis; prohibiting the sharing or disclosure of biological specimens and certain information except under certain circumstances; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 **Section 1** of this bill expands the crimes for which a convicted person is
2 required to submit to the Central Repository for Nevada Records of Criminal
3 History a biological specimen to be used for analysis to determine the genetic
4 markers of the specimen to include any felony, rather than certain felonies. (NRS
5 176.0913) **Sections 1 and 2** of this bill prohibit the sharing or disclosure of
6 biological specimens and certain information except under certain circumstances.
7 (NRS 176.0913, 176.0916).

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 176.0913 is hereby amended to read as
2 follows:
3 176.0913 1. If a defendant is convicted of an offense listed in
4 subsection 4, the court, at sentencing, shall order that:



* A B 9 2 R 1 *

(a) The name, social security number, date of birth and any other information identifying the defendant be submitted to the Central Repository for Nevada Records of Criminal History; and

(b) A biological specimen be obtained from the defendant pursuant to the provisions of this section and that the specimen be used for an analysis to determine the genetic markers of the specimen.

2. If the defendant is committed to the custody of the Department of Corrections, the Department of Corrections shall arrange for the biological specimen to be obtained from the defendant. The Department of Corrections shall provide the specimen to the forensic laboratory that has been designated by the county in which the defendant was convicted to conduct or oversee genetic marker testing for the county pursuant to NRS 176.0917.

3. If the defendant is not committed to the custody of the Department of Corrections, the Division shall arrange for the biological specimen to be obtained from the defendant. The Division shall provide the specimen to the forensic laboratory that has been designated by the county in which the defendant was convicted to conduct or oversee genetic marker testing for the county pursuant to NRS 176.0917. Any cost that is incurred to obtain a biological specimen from a defendant pursuant to this subsection is a charge against the county in which the defendant was convicted and must be paid as provided in NRS 176.0915.

4. Except as otherwise provided in subsection 5, the provisions of subsection 1 apply to a defendant who is convicted of:

(a) A ~~category A~~ felony;

(b) ~~A category B felony;~~

~~—(c) A category C felony involving the use or threatened use of force or violence against the victim;~~

~~—(d) A crime against a child as defined in NRS 179D.210;~~

~~(e) (c)~~ A sexual offense as defined in NRS 179D.410;

~~(f) (d)~~ Abuse or neglect of an older person or a vulnerable person pursuant to NRS 200.5099;

~~(g) (e)~~ A second or subsequent offense for stalking pursuant to NRS 200.575;

~~(h) (f)~~ An attempt or conspiracy to commit an offense listed in paragraphs (a) to ~~(g), inclusive;~~

~~—(i) (e), inclusive;~~

~~(g)~~ Failing to register with a local law enforcement agency as a convicted person as required pursuant to NRS 179C.100, if the defendant previously was:

(1) Convicted in this State of committing an offense listed in paragraph (a), ~~(b), (c), (f), (g) or (h);~~ (d), (e) or (f); or



(2) Convicted in another jurisdiction of committing an offense that would constitute an offense listed in paragraph (a), ~~(b), (c), (f), (g) or (h)~~ (d), (e) or (f) if committed in this State;

~~(j)~~ (h) Failing to register with a local law enforcement agency after being convicted of a crime against a child as required pursuant to NRS 179D.240; or

~~(k)~~ (i) Failing to register with a local law enforcement agency after being convicted of a sexual offense as required pursuant to NRS 179D.450.

5. A court shall not order a biological specimen to be obtained from a defendant who has previously submitted such a specimen for conviction of a prior offense unless the court determines that an additional sample is necessary.

6. Except as otherwise authorized by federal law or by specific statute, a biological specimen obtained pursuant to this section, the results of a genetic marker analysis and any information identifying or matching a biological specimen with a person must not be shared with or disclosed to any person other than the authorized personnel who have possession and control of the biological specimen, results of a genetic marker analysis or information identifying or matching a biological specimen with a person, except pursuant to:

(a) A court order; or

(b) A request from a law enforcement agency during the course of an investigation.

7. A person who violates any provision of subsection 6 is guilty of a misdemeanor.

Sec. 2. NRS 176.0916 is hereby amended to read as follows:

176.0916 1. If the Division is supervising a probationer or parolee pursuant to an interstate compact and the probationer or parolee is or has been convicted in another jurisdiction of violating a law that prohibits the same or similar conduct as an offense listed in subsection 4 of NRS 176.0913, the Division shall arrange for a biological specimen to be obtained from the probationer or parolee.

2. After a biological specimen is obtained from a probationer or parolee pursuant to this section, the Division shall:

(a) Provide the biological specimen to the forensic laboratory that has been designated by the county in which the probationer or parolee is residing to conduct or oversee genetic marker testing for the county pursuant to NRS 176.0917; and

(b) Submit the name, social security number, date of birth and any other information identifying the probationer or parolee to the Central Repository for Nevada Records of Criminal History.

3. Except as otherwise authorized by federal law or by specific statute, a biological specimen obtained pursuant to this



1 *section, the results of a genetic marker analysis and any*
2 *information identifying or matching a biological specimen with a*
3 *person must not be shared with or disclosed to any person other*
4 *than the authorized personnel who have possession and control of*
5 *the biological specimen, results of a genetic marker analysis or*
6 *information identifying or matching a biological specimen with a*
7 *person, except pursuant to:*

8 (a) *A court order; or*

9 (b) *A request from a law enforcement agency during the*
10 *course of an investigation.*

11 4. *A person who violates any provision of subsection 3 is*
12 *guilty of a misdemeanor.*

13 5. A probationer or parolee, to the extent of his financial
14 ability, shall pay the sum of \$150 to the Division as a fee for
15 obtaining the biological specimen and for conducting the analysis to
16 determine the genetic markers of the biological specimen. Except as
17 otherwise provided in subsection ~~4.1~~ 6, the fee required pursuant to
18 this subsection must be collected from a probationer or parolee at
19 the time the biological specimen is obtained from the probationer or
20 parolee.

21 ~~4.1~~ 6. A probationer or parolee may arrange to make monthly
22 payments of the fee required pursuant to subsection ~~3.1~~ 5. If such
23 arrangements are made, the Division shall provide a probationer or
24 parolee with a monthly statement that specifies the date on which
25 the next payment is due.

26 ~~5.1~~ 7. Any unpaid balance for a fee required pursuant to
27 subsection ~~3.1~~ 5 is a charge against the Division.

28 ~~6.1~~ 8. The Division shall deposit money that is collected
29 pursuant to this section in the Fund for Genetic Marker Testing,
30 which is hereby created in the State General Fund. The money
31 deposited in the Fund for Genetic Marker Testing must be used to
32 pay for the actual amount charged to the Division for obtaining
33 biological specimens from probationers and parolees, and for
34 conducting an analysis to determine the genetic markers of the
35 specimens.

