

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fourth Session
February 27, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:11 a.m., on Tuesday, February 27, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman William Horne, Vice Chairman
Assemblywoman Francis Allen
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Susan Gerhardt
Assemblyman Ed Goedhart
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman Harry Mortenson
Assemblyman John Ocegüera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

GUEST LEGISLATORS PRESENT:

Assemblywoman Valerie Weber, Assembly District No. 5



STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Judith Maddock, Committee Secretary
Matt Mowbray, Committee Assistant

OTHERS PRESENT:

Linda Krueger, Director, Forensic Laboratory, Las Vegas Metropolitan Police Department
Don Means, Captain, Forensics Division, Washoe County Sheriff's Office
Jeffrey Riolo, Senior Criminalist, CODIS Manager, Forensic Science Division, Washoe County Sheriff's Office
Troy Barrett, Sergeant, Sexual Assault Unit, Las Vegas Metropolitan Police Department
Donna Coleman, Child Advocate, Nevada Sex Offender Management Team
Jayann Sepich, Private Citizen, Carlsbad, New Mexico
Tim Kuzanek, Lieutenant, Administrative Services, Governmental Affairs, Washoe County Sheriff's Office
Bob Roshak, Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Kevin Higgins, Justice of the Peace, Department 2, Sparks Justice Court
Joan Neuffer, representing the Judicial Council of the State of Nevada
Jason Frierson, Attorney, Clark County Public Defender's Office

Chairman Anderson:

[Meeting called to order. Roll called.] I have a few Bill Draft Requests (BDRs) for introduction.

BDR 14-148– Clarifies provisions concerning authority to stay the execution of a judgment of death. (Later introduced as [Assembly Bill 192](#).)

BDR 14-152– Makes various changes concerning pleas that may be entered by defendants in criminal actions. (Later introduced as [Assembly Bill 193](#).)

BDR 14-655– Revises provisions governing the bond forfeiture reporting requirements. (Later introduced as [Assembly Bill 190](#).)

BDR 15-648– Revises provisions governing weapons in public buildings.
(Later introduced as [Assembly Bill 191](#).)

ASSEMBLYMAN OCEGUERA MOVED TO INTRODUCE
BDR 14-148, BDR 14-152, BDR 14-655, AND BDR 15-648.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN GERHARDT WAS
ABSENT FOR THE VOTE.)

Vice Chairman Horne:

I will open the hearing on [Assembly Bill 92](#).

[Assembly Bill 92](#): Revises provisions governing genetic marker testing of
certain convicted persons. (BDR 14-805)

Assemblyman Bernie Anderson, Assembly District No. 31:

The issues involved in this bill are not new to the Committee. The measure proposes to expand the list of offenders from whom a deoxyribonucleic acid (DNA) sample is required upon conviction to include all felons.

As many of the members may recall, we heard a similar measure last session, [Assembly Bill No. 382 of the 73rd Legislative Session](#), which also proposed to expand the list of crimes for which all DNA testing is required to include all felons. At that time we heard testimony that Nevada is in the minority of states that currently do not have such a requirement. This is why I requested this bill.

Right now under *Nevada Revised Statutes* (NRS) 176.0913, Nevada requires anyone convicted of a category A, B, or C felony involving the use or threatened use of violence to submit to DNA testing. Other crimes for which DNA testing is required include crimes against children, the elderly, and vulnerable persons. It also includes sexual offenders, stalkers, and those who fail to register as convicted felons or sex offenders.

In 2005 this Committee passed [A.B. No. 382 of the 73rd Session](#) as amended. The amendment deleted the proposal to require DNA testing for all felons but then expanded the existing law to mandate testing for category D felons involving the use or threatened use of violence. The bill was then rereferred to Ways and Means where it died.

This issue is too important to the victims of crime and as a tool of law enforcement not to bring it back to this Committee for discussion. You will hear

today about the expansion of the status to include nonviolent crimes under categories C, D, and E. You will also hear testimony today on the fiscal impact of the bill for local government, the Criminal History Repository, Corrections, and the Division of Parole and Probation.

By way of background, Nevada's Central Repository, which is a participant in the Federal Bureau of Investigation's (FBI) Combined DNA Indexing System (CODIS) is an offender database. This means the database primarily serves as a link to genetically identifying perpetrators of future crimes. When one of Nevada's two crime labs is working on a case, for example, a homicide, any DNA found at the crime scene will be compared to all of the DNA profiles that have been made part of the database to determine if there is a match. However, an individual DNA sample is not included in Nevada's Central Repository unless that individual has been convicted of an offense listed in NRS 176.0913. We will see this in Section 1 on page 2 of the bill.

Should Nevada pass the all-felon DNA database legislation, it will triple, if not quadruple, the odds of identifying rapists and other criminals. This alone could be a tool to solve rapes, homicides, and other unsolved crimes. The state of Virginia is frequently cited as an example when legislators in other states are considering DNA database expansion programs. Virginia has one of the longest standing all-felon DNA databases in the country. The state legislature has consistently invested in the DNA program. As a result, Virginia is experiencing approximately three hits per day on its database. For the first three months of 2005, they had 279 hits. I consider this to be an important piece of legislation.

Vice Chairman Horne:

In the original public policy on genetic testing, we required it for A, B, and C category felons because these were the types of crimes that we needed genetic testing for in the first place: sexual assault, murders, et cetera. We recently heard testimony on a bill on graffiti. We might end up genetically testing graffiti artists. Why the shift? Are we really going to get a bang for our buck by including this group that seems less likely to commit violent crimes?

Assemblyman Anderson:

If you will recall, several sessions ago we reexamined the process by which people were being held on death row and the death penalty issue in its entirety. The testing of DNA was a major part of that overall discussion. In that context, we clearly wanted to reserve it for that particular group of people. At the same time, we noted that a number of house burglars who were arrested and convicted of a felony often turned out to be rapists, but had not been convicted of those crimes. Similarly, those people who were already incarcerated for a crime were released in those states where the DNA match was utilized and then

put back into society because they had been wrongly incarcerated initially. Because of having the CODIS file in place, it was possible to utilize the DNA file to put them on trial and let an innocent person out. Those are the reasons we are trying to expand the overall database. Initially, we were asked to do this and thought the cost was going to be too great. That is ultimately why the money committees rejected it.

Assemblyman Segerblom:

Is there any estimate of what it costs per test?

Assemblyman Anderson:

I think one of the experts should handle that question. I know that over the last five or six sessions the cost of collecting the sample has changed. I do not think you can make the assumption that what you see on television on *CSI* is common in every single case. Those are all very expensive processes and not every crime lab has the capacity to store the information.

Assemblyman Segerblom:

Is there a national DNA database? Does the FBI have one also?

Vice Chairman Horne:

Let us save that for the experts.

Assemblyman Anderson:

I do serve on a committee that is trying to establish a link or intercooperative agreement between states that have DNA databases, as Virginia does. Nevada was one of the first three states in the nation to try to operate on a linkage system to open the way for communicating evidence and sharing information state to state. Unfortunately, we were the last to get some elements in place.

Linda Krueger, Director, Forensic Laboratory, Las Vegas Metropolitan Police Department:

The use of searchable databases is one of the true success stories in forensic science, especially as it applies to the CODIS database. In many instances, the utilization of this forensic technology has solved cases that could not be solved with traditional law enforcement techniques or additional detectives. The case of the Flamingo rapist in Las Vegas is one such case.

During the mid-1990s, a serial predator terrorized the east side of the city with a 15-month crime spree. Genetic profiles of evidence samples from several of these sexual assaults were entered into the DNA database. Police were frustrated with this for years until a DNA profile from an offender was entered

into the database in 2004 and suddenly a suspect was identified, illustrating the ability of the database to reduce unsolved crime.

Recent changes in technology have made it easier as more information from a variety of evidentiary items can be developed. Five years ago, a semen stain the size of a dime was needed for reliable DNA results. Today, results can be developed from a sample so small that it is barely visible. Evidence that would not have been collected five years ago now solves cases. This new technology has allowed agencies across the country to reexamine cold cases with the hope that even though all available leads have gone cold, probative evidence may be present which could provide new life to the investigation. Numerous cold cases have been solved in this manner.

Equally as compelling are the exonerations that have occurred since DNA technology became a routine examination in the nation's forensic laboratories. Consider the reports we have all seen of incarcerated individuals regaining their freedom. How many of us have been moved by these cases? Expanding the database is a certain means to ensure that persons wrongly accused or convicted can be exonerated.

Evidence samples placed in the database without the corresponding offender samples for comparison purposes render the database far less effective. Many violent criminals have nonviolent criminal convictions in their history. It is well documented that the entry into DNA databases cannot be limited to genetic profiles from those considered violent offenders. Research from the national forensic DNA study report clearly indicates that across the country nonviolent offenders are being identified by hits in CODIS on a routine basis. It is also probable that the investigation of cases in Nevada may affect the outcome of cases in other jurisdictions due to the heavy visitor volume and transient nature of the area's population. Criminal activity knows no boundaries. This is also evidenced by hits in this State to convicted offenders in other states.

While the use of DNA has unquestionably led to the resolution of numerous crimes throughout the country, a corresponding result that cannot be measured also exists. Through the solution of these crimes via the database, unknown numbers of other crimes have been prevented. Underutilization of forensic technology allows criminals to continue to prey on our community, denies justice to the innocently accused, and prohibits the conviction of the guilty. Any situation that prevents the full use of the resources offered by DNA databases does a disservice to the community we serve. We urge you to support the collection of samples from all felons. The citizens of Nevada deserve these crime-solving and crime-prevention capabilities.

Don Means, Captain, Forensics Division, Washoe County Sheriff's Office:

The CODIS system in the State of Nevada is made up of the Washoe County Sheriff's Office and the Las Vegas Metropolitan Police Department. For all practical purposes, these two local labs are the State of Nevada. In early 1990s, Washoe County was one of the original CODIS development labs. There were ten labs in the country. In the early 1990s, we required that sex offenders be registered in the DNA database. These are the 13 states that did that ([Exhibit C](#)).

The next slide will show you all the states that have all-felony requirements. As you can see, 44 of them do and 6 do not. Nevada is one of the states that do not require all felons to be included in the database. We have gone from the leading edge to the back of the pack when it comes to DNA collection.

You can see the number of DNA samples we have collected over the years. We came to this Committee and had a bill passed in 2001 that required all category A and B felons to submit a sample. We went through a five-year period when we only had 13 hits. In the next four years, we had 236 hits with DNA samples. With all felons we expect to collect approximately 13,000 samples per year. To date we have had 141 offender hits to cases. We have had 19 homicides, 59 sexual assaults, 76 burglaries, 21 auto thefts, 19 robberies, and 9 miscellaneous cases that have been solved through the DNA database.

In 46 percent of these cases, the sample was collected for theft, larceny, or robbery. In 90 percent of the homicides, 17 out of 19 cases, the sample was collected for a property crime. In 80 percent of the sexual assaults, 48 out of 59, the sample was collected for property crimes. We have a slide here of the casework for our lab. In 2006, out of 386 cases, 69 people were excluded and 118 people were included, 112 went into CODIS, and we have no results to report in 87 cases.

This is what haunts me: We have 110 whole profiles of homicides in our database right now, 260 sexual assaults, and 124 robberies. Nationally, you can see that the numbers are much greater and that is why we believe having more samples gives us a better hit opportunity.

People frequently ask me what the profile actually looks like. I have used my own profile in most of the handouts given out across the State. It is basically a series of numbers. People want to know whether we have information such as whether someone is a diabetic or taking Xanax.

Additionally, the database is highly regulated. We have annual audits. We were audited three times last year by offices of the Inspector General, The National

Institute of Justice, and the FBI. We have no medical information. DNA from victims is not allowed in the database and any violation of the rules of the database is 10 years in prison and \$250,000 in fines. The database quickly excludes thousands. In Nevada we have 20,000 offender profiles and 1,400 forensic profiles. The national database has 3.9 million offender profiles and 160,000 case samples in their database. Fingerprints are also collected every time you collect a DNA sample. We use that for verification. We have had instances where people were convicted of a crime and gone into the prison or parole system under an alias.

We have made matches with 42 other states and one country. We have had sexual assaults from New York, Canada, Washington, California, New Jersey, Iowa, Kentucky, and Missouri. We lived off of federal grants and they have been sporadic. A lot of the federal money has now gone to the war and to homeland security and will not support long-term personnel.

I will give you a specific case: the homicide of Virginia Mosconi in Verdi on June 8, 2001. This is a photo of the crime scene. Ms. Mosconi was killed while she was lying in bed. As you can see, there is a pair of pantyhose on the floor. The DNA of an unknown male profile was found on those pantyhose. We had a hit on a man named Joaquin Hill. His DNA was added to the California database due to a burglary conviction. We got his DNA by a court order and subsequent search warrants were done. This T-shirt belongs to Mr. Hill. His DNA and Virginia Mosconi's blood were found on the shirt. Mr. Hill was convicted of first-degree murder in November of this year.

With regard to the Las Vegas serial rapist that Ms. Krueger alluded to, the first one happened Christmas day 1996 when a 34-year-old woman was raped and the rapist opened the victim's presents. In October of 1997, a 21-year-old woman was raped. This was one of the least violent incidents. The victim said the assailant was nice and polite. In March of 1998, a 26-year-old woman was raped. The rapist entered through an open window. In 2001, the DNA of an offender convicted of pandering prostitutes was taken. In 2004, Las Vegas entered the DNA profile and in September of 2004 the suspect was arrested. The most famous case was the one involving Lisa Marie Bonham, a 7-year-old who was kidnapped in Idlewild Park. For several years we had multiple suspects. Her body was found off of Dog Valley Road. Several samples had been taken because DNA technology was continually developing. Additional semen was found and run with new technology and we were able to identify the suspect. There were 23 suspects who were eliminated for DNA casework, 10 of which developed to the point where seizure orders were taken, and they were exonerated. Mr. Smith was convicted in November of 2000.

Between the two laboratories, we spent \$2.4 million of our own money to get this DNA database moving forward. That is for kits, samples, et cetera. As you can see from the results, I think it was well worth our money.

Assemblyman Segerblom:

Is there an estimated cost per sample, assuming we are going to require felons to provide samples?

Linda Krueger:

We estimate the cost per sample to be approximately \$90. That does not account for such things as audits and some administrative costs. The cost has come down. When we started this process early on, we requested \$250 to be submitted from each offender who provided a DNA sample, then we came back to the session and reduced that cost to \$150 per offender. While there is an area of the law that requires an offender to provide \$150 per sample, we do not get that. Less than 20 percent of the fines have been collected from the offenders. Twenty percent is definitely on the high side. It has gone up sporadically. It has been as low as two percent. In Washoe County, it has gone up to 15 percent. The program has basically been unfunded and has been well supported through federal grants and through the President's initiative grants, which will run dry in 2007.

Assemblyman Segerblom:

Is that shared with the FBI or some national database?

Jeffrey Riolo, Senior Criminalist, CODIS Manager, Forensic Science Division, Washoe County Sheriff's Office:

There are three levels of the database. There are the local laboratories where the offender profiles and casework profiles are entered into a computer. A DNA profile is a series of numbers which a computer can search and handle very easily. Profiles go into the local DNA databases. Washoe County Sheriff's Office has one and the Las Vegas Metropolitan Police Department has a local database. From there the DNA profiles are uploaded to a state DNA database that is housed at the Washoe County Sheriff's Office. From there the profiles are uploaded to a national DNA database that the FBI has in Virginia. All 50 states upload their DNA profiles from offender samples and casework profiles. For example, if we have an unsolved sexual assault profile that we want to search, we can search over 3.9 million profiles at the national level. There are also international databases. Canada and Australia have one, as do various countries in Europe. If we think a suspect may have come from Canada, we can ask the Canadians to search the database.

Assemblyman Mabey:

Where do you do the actual lab test on the sample?

Linda Krueger:

The samples are processed both at the Washoe County Sheriff's Office and the Las Vegas Metropolitan Police Department. With grant funding, some samples have been outsourced to private laboratories which then send us the DNA profile. We go through quality assurance processes to verify those profiles and then enter them into the database.

Assemblyman Mabey:

So you can actually do the sampling of the DNA and run the DNA sequences in a lab here in Nevada?

Linda Krueger:

Correct.

Assemblyman Carpenter:

What happens out in the rurals? Do they send the samples to you?

Don Means:

We get them from the Parole and Probations Department and from the state prisons. All of the rurals go to one of those points of entry. We also get them directly from the records divisions of various counties.

Assemblyman Carpenter:

Say there was a person convicted of a felony in Elko County. Would they take the sample immediately after conviction and send it to you? Who would do that?

Don Means:

If he is going to prison upon conviction, we would get that at the medical intake at the prisons, or the Parole and Probation Department would do that. It depends on the offense. Sometimes we will have Parole and Probation do that right at the courthouse before they leave because at times they do not show up for their first appointment, or they do it at their first appointment with the Parole and Probation Department.

Vice Chairman Horne:

These samples are taken at the time of charge or the time of conviction?

Don Means:

At the time of conviction.

Vice Chairman Horne:

You mentioned that they sometimes do not show up.

Don Means:

After they are convicted, they get assigned to Parole and Probation. We were having instances where they never even made that first appointment for whatever reason, so we wanted to make sure we got that sample. Obviously, somebody who absconded under Parole and Probation would be of interest to us, so we thought the best way to do that would be to collect right there at the courthouse. Parole and Probation actually does that.

Vice Chairman Horne:

For people who have multiple felonies, how many times do they give a sample? If in 2000 you were convicted of a category C felony and then in 2007 you were convicted of another C felony, do you give another sample?

Don Means:

We have received duplicates, but we work very long and hard with the Nevada repository to get a designation in their criminal history that they have given a sample previously. That is what the fingerprint verification is for.

Vice Chairman Horne:

If we throw out a bigger net we will be able to catch more offenders, so why not include all offenders? A person charged with misdemeanor trespass, for instance, could be a predator, but he is not tested. Why not include low-level drug users or graffiti artists? Have we looked at narrowing it?

Don Means:

One of the problems we had with the audit was the feds wanted clearly defined categories of felons whose DNA we are supposed to collect. We could not clearly delineate which crimes were included. As far as low-level drug offenders, the *Crystal Darkness* documentary indicated that 90 percent of the criminal court calendar in the Second Judicial District is related to drugs, and 70 percent of that is methamphetamine. The people out there committing the violent crimes are drug offenders.

Vice Chairman Horne:

That was probably a bad example on my part. We do capture a good number of offenders at the category D and E levels who are not violent offenders.

Assemblyman Anderson:

If someone has been cremated, sometimes there is ash remaining. Is it possible to get DNA from that kind of forensic material?

Linda Krueger:

I think it would depend on how successful the cremation process was. If it is burned up to fine ash, I doubt we would get DNA out of it. However, we got DNA out of samples from an explosion at Sierra Chemical several years ago. There was an explosion and the bodies were blown up to bits. We did have one-inch chunks out of which we were able to get great DNA profiles.

Assemblyman Anderson:

The forensic pieces from the September 11, 2001 attacks are still being identified.

Linda Krueger:

It depends on the size of the piece.

Assemblyman Carpenter:

You do not take samples from victims?

Don Means:

The biological profile from the victim does not get uploaded into the national database. All that comparison work is done at the local level, so that victim's sample does not go to the database. That is an FBI requirement.

Assemblyman Carpenter:

You do take the sample though, correct?

Don Means:

We do take what we call a reference sample from the victim or any of the other people who might have been involved at the time. All of our detectives' biological samples are in a separate database for us to exclude them as possible sources of that DNA.

Troy Barrett, Sergeant, Sexual Assault Unit, Las Vegas Metropolitan Police Department:

[Read from prepared testimony ([Exhibit D](#)).]

Vice Chairman Horne:

I will close the hearing on A.B. 92 and open the hearing on Assembly Bill 99.

Assembly Bill 99: Makes various changes concerning genetic marker testing of certain persons. (BDR 14-288)

Assemblywoman Valerie Weber, Assembly District No. 5:

This is overdue legislation because DNA evidence has become an important aspect of the criminal justice system. It may be found at the scene of a crime in the form of saliva, blood, skin, hair, fingernails, bones, semen, and other bodily fluids. It can be found on victims' clothing, carpet, bedding, or other parts of a crime scene. In the event of a rape or murder, it is necessary to collect DNA evidence from the victim to distinguish between the DNA of the victim and that of the perpetrator. This DNA evidence is one of the most accurate methods of determining guilt or exonerating the innocent, including exonerating individuals on death row for crimes they did not commit. Assembly Bill 99 proposes to change current law to close a gap by expanding the crimes for which a convicted person must submit a DNA sample to include those convicted of any felony in the State of Nevada. Currently, DNA is collected only from those convicted of felonies in the A, B, and C categories. As you can see in your handout ([Exhibit E](#)), Nevada is only one of two western states and one of six remaining states that do not require DNA collection from all convicted felons.

The passage of all-felon DNA database legislation has been going on throughout the United States since 1994 with the initial passage of Senate Bill 100 in Alabama. When we brought forth a similar bill mentioned earlier by Chairman Anderson, A.B. No. 382 of the 73rd Legislative Session, 13 states at that time had yet to enact such legislation. Now we are down to six. That bill did not pass due to the fiscal impact, but this is so important for our State that we need to reconsider it. Every state has enacted this expansion through legislation with the exception of California. In 2004, California's passage of Proposition 69 expanded mandatory collection of DNA retroactively to all convicted felons and some nonfelons and in 2009 to individuals arrested on both nonviolent and violent felonies. This passed by a vote of the people in the state of California by 69 percent, but it does not come without expense. Collection of DNA is of little value if it cannot be tested and uploaded into the CODIS system. I believe this is necessary legislation for all of us this session.

Assemblyman Carpenter:

Your bill also calls for DNA samples of juveniles who have been adjudicated. Do you know how many other states do that?

Assemblywoman Weber:

I do not have that information, but I will get it to you.

Donna Coleman, Child Advocate, Nevada Sex Offender Management Team:

[Read from prepared testimony ([Exhibit E](#)).]

Assemblyman Anderson:

How does Oregon pay for their program?

Donna Coleman:

I do not know, but I will get that information to you.

Jayann Sepich, Private Citizen, Carlsbad, New Mexico:

You as legislators have the opportunity today to recommend legislation that not only has the power to solve crime, but prevent crime and save lives. My daughter Katie was a vivacious, accomplished, joyous 22-year-old graduate student pursuing a Master of Business Administration at New Mexico State University in Las Cruces in August of 2003. One Saturday, she worked a full shift as a server at a Mexican restaurant, went back to her home, showered, changed, and went to a friend's house. She was there about 45 minutes; she and her boyfriend had an argument, she got angry, and she decided to walk the five blocks home. She walked out of the house without her keys, purse, or cell phone, and that was a very fateful decision. On the Sunday of Labor Day weekend in 2003, my family and I woke up anticipating a very happy day. Our home was full of family and friends. The phone rang at 2:15 p.m. Our happy, wonderful lives were shattered with six words: "Have you talked to Katie today?"

It was Katie's roommate Tracy. She told me that after Katie left the gathering that night no one could find her. There was no trace of her. My husband spoke with Tracy and Katie's boyfriend, Joe, and told them to call the police and file a missing person's report. My husband and his best friend Craig drove four hours from our home to Las Cruces to look for our daughter. Before my husband got to Las Cruces, our worst fears were realized. When Tracy and Joe filed the missing person's report, they matched it with the body of a young woman who had been found in an old city dump by target shooters that morning at about 11:30 a.m. She had been raped, sodomized, strangled, taken to the city dump, and her body set on fire.

I cannot begin to explain what a parent goes through when this happens to their daughter. She was an incredible young woman. We miss her still today. We were plunged into a pit so deep and dark we did not know if there would ever be light again. In the aftermath and the horror of losing our daughter, the first

thing we did was say goodbye. We live in a small town, but over 1,000 people attended her funeral. Our church holds 600 people and it was standing-room only, while 400 more stood outside during the service. No parents should ever have to bury their child.

We turned our attention to the questions that needed to be answered: Who could have done this to our daughter, and why? We found out she fought very valiantly for her life. There was skin and blood under her fingernails and that contained the DNA of her attacker. We learned from the head of the investigation team, Captain Robert Jones, that DNA had been taken and analyzed, and uploaded into the state and national databases and that it would be run frequently against offender databases. We learned that the best chance we had of finding the killer of our daughter was through this DNA. New Mexico had passed a law in 1997 that mandated that DNA be taken from all convicted felons. This gave us hope. We know that DNA is a scientific tool that can tell us with incredible accuracy who commits these horrible crimes.

Before this happened I had no interest in changing the world. I just wanted to live in my own little corner of the world filled with family, friends, love, and laughter. After this happened I realized I had the opportunity and responsibility to talk to people like you who have the power to make these changes so that other mothers can live in their own little corners of their world with their daughters. I have done tremendous research, and I can tell you there are case studies that say DNA does not just solve crimes—it saves lives.

On December 18, 2006, three years and three months after our daughter was murdered, we got a phone call that stunned us. The detective working on Katie's case said they found a match. Katie was murdered August 31, 2003. Less than three months later, a man named Gabriel Avila, who was a Mexican national in this country illegally, broke into the home of two other women in Las Cruces armed with a knife. When he got into their apartment, they got into the bathroom, locked the door, and called the police. He was apprehended and arrested. He was charged with aggravated burglary and convicted in March of 2004. Because he did not have an arrest record, he was allowed to cash a \$25,000 cash bond to await sentencing, but he fled to Mexico.

He was free for 17 months before he was apprehended on another charge in August of 2005. He was sentenced for this aggravated burglary charge, but it was not until October of 2006 in a minimum security prison with no fences, that his DNA was finally taken and verified, and in December of 2006 a match was made. When the investigators got the information about the DNA match, they further investigated it. They spoke with his ex-wife who said when she was cleaning out his truck to sell it, she found a diamond ring in the ash tray. It

was the ring my daughter was wearing the night she was murdered. They found the tires that had been on the truck August 31, 2003. They exactly matched the tire tracks that were found by my daughter's burned body. When presented with the DNA evidence, the ring, and the tire tracks, Gabriel Avila confessed and was formally charged with my daughter's rape and murder on December 26, 2006, which ironically would have been her 26th birthday.

In the more than three years of investigating this crime, this man's name never surfaced. If not for DNA, we would have never known who murdered our daughter. DNA brings justice. During these three years, I learned a lot about DNA and how it is used. Katie's Law calls for taking DNA upon felony arrest, not conviction. I was very surprised to learn there are six states that do not mandate taking DNA upon all felony conviction. Of course, Nevada is one of these states and that is why I am here today.

Deoxyribonucleic acid (DNA) is a very powerful scientific tool. It prevents crimes. If Gabriel Avila had not been forced to give a DNA sample, he would have served a few short years and been released. If he had taken the plea deal that was offered to him when he was charged with aggravated burglary, he would not have been convicted for a crime that would have required DNA to be taken under your current statutes. I am not positive of that, but that is how I understand it.

Deoxyribonucleic acid (DNA) is the 21st century equivalent of the fingerprint. We do take fingerprints. There are people who say taking DNA is an invasion of privacy. Our DNA is not private. When we all leave this room today, our DNA will be left behind. It has also been argued that it is a violation of civil liberties. The Supreme Court of the United States has found again and again that people do not have the right to conceal their identity, and DNA is used in state and national databases as merely a means of identity. There are over 3 million markers in the DNA molecule; it tells us everything genetically about us. The markers placed in the database were chosen specifically because they contain absolutely no genetic information. If you look at the bands on an old 33 rotations per minute (RPM) vinyl record, they contain the music. The bands between the songs do not. Those bands between the songs are so specific to that album that by analyzing those bands you can tell with absolute certainty which record it is. That is how the markers in the database work. They contain no genetic information, but they are so specific to us individually that they identify who we are.

The digitalized DNA in the database cannot reveal any genetic, medical, or private information. It is merely a form of identity. I would have someone take my DNA code before I would give them my social security number. There is a

lot more that can be done with the latter. The State of Nevada has enacted legislation to require DNA to be taken from some convicted felons, not all. I would strongly urge you to take DNA from all convicted felons. As of December of 2006 in Nevada, 304 cases were solved using the database according to the FBI. That pales in comparison to Virginia, which has now solved over 3,500 cases. Virginia now matches DNA to at least two unsolved crimes every day. Twenty percent of these matches are made to felony convictions for drug and forgery crimes. Seven hundred criminals have been identified by including these so-called low-level felons on their database. Half of these drug and forgery offender matches were made to unsolved violent crimes.

In our criminal justice system, crimes that are actually committed are oftentimes not the crimes that people are convicted of due to plea bargaining. That is why it is so important that we take DNA from all convicted felons.

Laws can address many of society's problems, and I am a big believer in legislation, but they cannot truly work unless they are properly funded. It is vital that the proper funding be attached to legislation to make sure it really works. That is when crimes can be prevented and lives saved. I understand that money is scarce and budgets are tight, but DNA databasing is an investment. We are already spending the money. Over \$250,000 was spent on my daughter's case alone. When we identify a felon and he is not allowed to commit other crimes, we are not investigating the crimes he did not commit. I have had many prosecutors tell me that when presented with DNA evidence, these people often plead guilty and we save court costs. Trials are very expensive. By doing this we are saving trauma, lives, and money.

I was asked today how much it costs to take a sample. In New Mexico, including the postage and analysis, it costs \$82. There was one case in California that if a DNA sample had been taken, it would have saved 11 lives. In California as well as other states, DNA is being used to investigate and solve crimes beyond violent crimes such as burglaries, home invasions, and many other crimes. This leads to a reduction in insurance rates. Those who take a leading role in the passage of DNA legislation will be heroes in the eyes of their constituency. I have seen this happen. There is nothing that can be done to bring Katie back, but we can work together and fund legislation and make DNA work. The true beauty of it is that we will never know which lives will be saved. We will never know which mothers will not have to bury their daughters. Is that not wonderful?

Assemblyman Cobb:

I was interested in the law you passed in New Mexico, which mandated that a DNA sample be taken not for all felony arrests, but for burglary, sex crimes, and

murder arrests. This was passed only recently, but have there been any preliminary results that show how many more crimes were solved because of the expansion to include arrests as well?

Jayann Sepich:

In New Mexico, it went into effect January 1, 2007. In January, 168 samples were taken. To this date we have not experienced any cold hits. In New Mexico, the only felonies that are excluded are white collar crimes, vehicular crimes, and juveniles. The sample is taken upon arrest. Upon booking when they take their fingerprints and photograph, they also take a DNA sample.

What made me so passionate about taking DNA upon arrest was a man in California who was arrested for assault with a firearm. That was his first felony arrest on January 26, 1987. He was arrested a total of 21 times until he was actually convicted of a crime that allowed his DNA to be taken. His DNA was taken when he was convicted of rape in 2002. It was run in the database and they discovered that he raped and murdered 12 women, the first of which was raped and murdered in March of 1987. Had his DNA been in the database from that first felony arrest, 11 women would have been saved. There was a man named David Jones who was wrongfully convicted of three of those murders and had been in prison for 11 years. That is the power of DNA.

Assemblyman Anderson:

How do they fund it in New Mexico? How many forensic laboratories do they have?

Jayann Sepich:

I think the way New Mexico works is a miraculous story. The funding for the 1997 law was incredibly sparse and relied on a lot of federal grants, but those are drying up. That is not a good way to fund it because federal grants come in a big lump and then there is nothing. That is what they relied on from 1997 until Katie's Law was passed. I was adamant about the funding. A lot of the funding that came about through Katie's Law is running the DNA program in New Mexico. This year we are trying to have a state-of-the-art crime lab built. We have a crime lab in Albuquerque that serves as the crime lab in New Mexico. All of our DNA analysis is sent to private labs. We are working very hard to change that.

Assemblyman Anderson:

We have the National Council of State Courts training facility here in Washoe County. Judges from all over the United States come here and part of their tour includes the forensic lab at Washoe. I recall that the District Attorney from Cook County in Chicago was very impressed with the facility we have here.

**Tim Kuzanek, Lieutenant, Administrative Services, Governmental Affairs,
Washoe County Sheriff's Office:**

The Washoe County Sheriff's Office supports this legislation and would appreciate your assistance in passing this.

**Bob Roshak, Sergeant, Office of Intergovernmental Services, Las Vegas
Metropolitan Police Department:**

Las Vegas Metro supports this legislation and respectfully requests your support.

Assemblyman Segerblom:

What do you think the estimated cost of this would be? I gather the current funding is going away, so we are going to have to pay for what you currently do plus the additional felonies that would come under this program.

Kevin Higgins, Justice of the Peace, Department 2, Sparks:

We are not in opposition to the public policy issue here at all. Our concern is with the funding mechanism. As you know, this funding mechanism is an additional administrative assessment that has been added to all misdemeanor citations and felonies in Nevada. This is one of four bills this session that are adding additional administrative assessments ranging from \$1 to \$100, all for very worthy public policy law enforcement issues.

I know how valuable DNA is. When I was a prosecutor with the Attorney General's Office, I had one of the first DNA cases in 1990. If you get a \$25 ticket for a seatbelt violation, we add a \$25 administrative assessment, a \$10 court facility fee, and a \$7 drug court fee, for a total of \$67. Most people who run stop signs ask me why they are paying for drug court, but that is the way the system is set up. Even if I reduce that ticket to the minimum \$5, it is still \$47 once you add all the administrative assessments. The municipal courts become collection agents for these public policy issues.

It is becoming more and more problematic to collect additional funds. We spend a lot of time issuing warrants for people who do not pay their fines. All of these administrative assessments have to be collected up front, and the statute requires them to be paid in full. We cannot break them into payments. In a DUI case, someone may very well have \$150 in administrative assessments, and they tell me they have \$25 per month to spare. Sometimes I break that into payments even though the Administrative Office of the Courts tells me not to do it. It is an ongoing collection problem. Fifty-one percent of that administrative assessment goes to fund the court system. Forty-nine percent goes to fund other executive department jobs. Every week every judge has to make decisions about how to collect these administrative assessments. During arraignments

some people come before me and say they are going to lose their jobs if they get arrested because they cannot pay. I have to make a decision as to whether we collect \$150 on their DUI, or let them out to work. Most times we let them out to work, and they go through this cycle of being rearrested over these administrative assessments.

Our primary concern is with the Supreme Court decision in *McKay v. City of Las Vegas* [106 Nev. 203, 789 P. 2d 584 (1990)]. Administrative assessments have been challenged twice in this State. Our Supreme Court found them constitutional both times but put very narrow limits on them, saying those assessments have to go primarily to the improvement of the court system. I would hate for this very worthy bill to pass with a poison pill included. What happens if someone challenges those assessments in court and the Supreme Court says this is not primarily for the improvement of the court system? We think these types of things should be paid for out of the general fund. I know how tight money is this session, but that seems to be the easiest way to pay for this. I will have to answer the question in my court, "Why am I paying a dollar to test felons for DNA?" It is a worthy issue, but it is a problematic one. We try to stay out of public policy issues as judges, but perhaps there are other funding sources. An administrative fund that has been used in the past was the interest earned on inmate personal accounts. I do not want to dip into the prison's budget, but I think some of those funds are available. I think this is a worthy and important enough issue that the general fund should pay for it.

The pragmatic issue is that there is a problem with all these administrative assessments. This is a house of cards we have constructed to pay for the court system outside of the general fund, and I would hate for anything to be challenged that would involve the possibility of all or some of that funding being challenged in the future.

Vice Chairman Horne:

In summary, you are okay with the policy. The funding is a problem in that you have trouble collecting. You anticipate there may be a problem down the road with regard to these assessments.

Kevin Higgins:

That is exactly right.

Assemblyman Anderson:

We have been very fortunate in utilizing these assessments for drug courts and several other courts. We have prepared a research memo I would like distributed to the Committee ([Exhibit F](#)) so that we may understand this 51 to 49 percent breakdown and how those dollars are allocated in administrative assessments. It

is such a complicated formula and the money goes to so many different things: court costs, processing, and the Criminal History Repository.

Joan Neuffer, representing the Judicial Council of the State of Nevada:

I am in opposition to Section 2 only.

I want to acknowledge the efforts of Assemblywoman Weber and Ms. Sepich and recognize that a request for funds in the amount of \$1 for DNA testing is reasonable and a worthy cause. The problem is the funding mechanism. We are adding an additional administrative assessment to the existing statutory scheme that has been challenged twice in our Supreme Court. Administrative assessment has been around since 1983. It was challenged in 1986 and most recently in the 1990 *McKay* decision. As we are all aware, a law can be constitutional yet the application of that law can be unconstitutional. Policy is the overriding issue. With respect to Section 2, do we want to add a new administrative assessment to an existing law that has been challenged twice in our state Supreme Court? Do we want to allow our justice and municipal courts to act as collection agencies to the extent that their actions are a violation of the separation of powers doctrine in our state *Constitution*? For these reasons, we remain opposed to any additional administrative assessments in the existing NRS 176.059.

Vice Chairman Horne:

Is it your contention that the Legislature does not have the authority to force the Judiciary to impose fines for term violations?

Joan Neuffer:

The Legislature has the power and authority to pass laws to assist the courts in their funding issues. The problem is the actual application of the law may result in the violation of the separation of powers doctrine.

Vice Chairman Horne:

How?

Joan Neuffer:

If our justice courts continue to act as collection agencies, they would be performing the duties of the Executive Branch. We are proposing that the proponents of this bill look to the Executive Branch to address these very important issues.

Kevin Higgins:

The distinction the Supreme Court made in the *McKay* case is there is a very thin line between an administrative assessment and a tax. Once something goes

beyond supporting the court system, it is a tax and it has to go through the tax funding process rather than making the courts tax collecting agencies. The further away we get from court purposes, the closer it gets to being a tax, and that is the constitutional issue.

Jason Frierson, Attorney, Clark County Public Defender's Office:

We are neutral with respect to the provisions of A.B. 99 that require all felons to submit to DNA testing. It is our view that that is primarily an administrative function, and our office is taking no position with respect to those provisions. We are concerned with a few provisions of A.B. 99. The bill provides that a person who fails to give a DNA sample is guilty of a category C felony. That is already handled by the court system. If someone is on probation, naturally that would be a condition of their probation. If they refuse to do anything to comply with the conditions of their probation, they are going to be subject to a revocation of their probation. For those in custody there are options made available to the court. However, the court has already resolved the issue where an underlying offense might be a category E felony, and something as simple as a DNA test would add an additional category C felony. They have measures to deal with people who do not comply with the conditions the court requires.

Assembly Bill 99 as it is currently drafted requires juveniles adjudicated delinquent for a crime that would be a felony if they were an adult to submit a DNA sample. I got indications from our juvenile office that would include eight-year-olds who are adjudicated delinquent for stealing a candy bar from a 7-11.

We are concerned with the provision that says if a sample is admitted in the database by mistake that any detention, arrest, conviction, or adjudication of a person based on that sample is not invalidated. There are other states that have similar measures, and at least some of those states have measures accompanying this provision that provide a system for purging the records. For example, if a person voluntarily provides a sample to eliminate themselves as a suspect in a case and it is found they are no longer a suspect, there are states that provide that that person can have that sample purged from the system. California, for instance, has a two-year provision where it is automatically purged. In other instances, a person can petition to have their sample purged. Those states also have a provision that says if between the time they provided that sample and the time it is purged—even if the purge is delayed—they happen to match another sample in another case, it would invalidate their association with that case. That would resolve the issue with respect to samples being placed in error. We remain neutral with respect to the provisions that require all convicted felons to have to submit a sample.

Assemblyman Cobb:

Regarding the purging of the records for certain individuals, what harm does it do to have those records on file?

Jason Frierson:

There are some concerns about cost and privacy. We want to make sure this bill targets the individuals who we want to include in a pool to consider. We could expand it to include absolutely everybody, and inevitably that would result in some hits, but we want to control cost and focus on the people we are trying to target. If they have absolutely no convictions whatsoever and if they voluntarily provide a sample, there is just no reason to include them and maintain that sample in the database.

Assemblyman Cobb:

You are saying it does no harm?

Jason Frierson:

I do not think it does any harm as a criminal matter.

Vice Chairman Horne:

Can you clarify your statement that all juvenile offenses would be subject to DNA testing? If a juvenile has the intent of going into 7-11 and stealing a candy bar, that is felony burglary. People do not think it happens, but it does. People do get charged with a burglary, and they get lumped into this.

Jason Frierson:

All juveniles who are adjudicated delinquent for committing a crime that would be a felony if they were an adult would be included in this. The juvenile system is quasi-criminal, so those individuals are not felons. The reason we remain silent with regard to A.B. 92 is because it says "all felons." This bill expands it to include those juveniles who are certified as adults. This bill opens the door to DNA testing for juveniles who are adjudicated delinquent for crimes that would have been a felony had they been convicted as an adult. The standards are different in juvenile court. The example was provided to me of the eight-year-old who steals a candy bar. In an effort to manage the DNA database and focus on the people we think need to be in the pool of suspects, the eight-year old might not be appropriate to include.

Vice Chairman Horne:

It would be helpful to the Committee if you could provide an amendment with your suggestion on how it might read in order to exclude certain juveniles.

I will close the hearing on A.B. 99.

Chairman Anderson:

We have a memo on administrative fines and fees ([Exhibit F](#)). I always ask for an update of this particular document at the end of every session because it comes up so frequently in discussions. We are asked why we do not just pay for something via administrative assessments. You can see the breakdown relative to what happens to the original bill, A.B. 92. It also gives you the year that many of these additional administrative assessments have been set since 1991. The courts have been relatively supportive of what we have done. Of course, many of those assessments have been the ones the court wanted, so it is not surprising that they upheld them.

Assemblyman Segerblom:

As a Committee, do we have the authority to enact an assessment?

Chairman Anderson:

We are allowed to enact assessments. The choice will come before the committee. If A.B. 92 is to be the vehicle, we will rerefer it to Ways and Means. If we choose to do A.B. 99, then we have other problems to deal with, but it should also go to Ways and Means. Both bills have a fiscal impact. Assembly Bill 99 has a two-thirds requirement in addition.

It looks like the long-term question is going to be whether we want to start doing this upon arrest. Apparently, quite a few states are currently looking at that. Not wanting to look at the fiscal issue, we have been taking baby steps every session for several sessions. The change in the funding formula has caused problems at our two crime labs.

Assemblyman Mabey:

I would like them to give us more numbers. I know we are just handling the policy end of this, but when we know the cost, it helps us to draft the policy. If those folks can help us determine what these DNA studies would cost from general funds, it would be helpful for me.

Chairman Anderson:

It depends on the number of cases. We have an initial question we will have to overcome because of the people we currently have incarcerated. It becomes a recognition of funds as new convictions come in. We will see if that kind of information is available.

We are adjourned [at 10:14 a.m.].

RESPECTFULLY SUBMITTED:

RESPECTFULLY SUBMITTED:

Judy Maddock
Recording Secretary

Angela Flores
Transcribing Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 27, 2007

Time of Meeting: 8:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Witness list
A.B. 92	C	Don Means, Washoe County Sheriff's Office	PowerPoint presentation on CODIS
A.B. 92	D	Troy Barrett, Las Vegas Metropolitan Police Department	Prepared testimony
A.B. 99	E	Donna Coleman, Nevada Sex Offender Management Team	Prepared Testimony, Oregon CODIS report
A.B. 99	F	Allison Combs, LCB Research Division	LCB memo on administrative assessments