

ASSEMBLY BILL NO. 105—ASSEMBLYWOMAN GANSERT

PREFILED DECEMBER 31, 2008

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning genetic marker testing of certain criminal defendants. (BDR 14-51)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to criminal procedure; providing that a defendant convicted of certain offenses must submit a specimen for genetic marker testing without a court ordering him to do so; authorizing a board of county commissioners to accept gifts, grants and donations for the county's fund for genetic marker testing; revising the purposes for which a forensic laboratory that receives money from a fund for genetic marker testing may use the money; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Upon conviction of certain crimes, existing law provides for the issuance of a court order requiring: (1) certain personal identifying information of the defendant to be submitted to the Central Repository for Nevada Records of Criminal History; and (2) a biological specimen of the defendant to be obtained for genetic marker testing. (NRS 176.0913) **Section 1** of this bill eliminates the need for a court order for these requirements.

Existing law provides that a defendant who submits a biological specimen for genetic testing must pay a fee for that testing, which is then deposited with the county treasurer for deposit in that county's fund for genetic marker testing. Money remaining in the fund, after the county treasurer pays the actual costs of obtaining a biological specimen, must be distributed to forensic laboratories engaging in genetic marker testing for use for certain purposes. (NRS 176.0915) **Section 2** of this bill authorizes a board of county commissioners to accept gifts, grants and donations for the county's fund for genetic marker testing and expands the purposes for which a forensic laboratory which receives money from the county's fund may use that money.



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

Section 1. NRS 176.0913 is hereby amended to read as follows:

176.0913 1. If a defendant is convicted of an offense listed in subsection 4 : ~~[-, the court, at sentencing, shall order that:]~~

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

(b) A biological specimen **must** be obtained from the defendant pursuant to the provisions of this section and ~~[that]~~ the specimen **must** 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 felony;

(b) A crime against a child as defined in NRS 179D.0357;

(c) A sexual offense as defined in NRS 179D.097;

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

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

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



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(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), (d), (e) or (f); or

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

(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.450; or

(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~~ **must not** be obtained from a defendant who has previously submitted such a specimen for conviction of a prior offense unless ~~the~~ **a** 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 176.0915 is hereby amended to read as follows:

176.0915 1. If ~~the court orders that~~ a biological specimen ~~be~~ **is** obtained from a defendant pursuant to NRS 176.0913, the court, in addition to any other penalty, shall order the defendant, to the extent of his financial ability, to pay the sum of \$150 as a fee for obtaining the specimen and for conducting the analysis to determine the genetic markers of the specimen. The fee:

(a) Must be stated separately in the judgment of the court or on the docket of the court;

(b) Must be collected from the defendant before or at the same time that any fine imposed by the court is collected from the defendant; and

(c) Must not be deducted from any fine imposed by the court.



2. All money that is collected pursuant to subsection 1 must be paid by the clerk of the court to the county treasurer on or before the fifth day of each month for the preceding month.

3. The board of county commissioners of each county shall by ordinance create in the county treasury a fund to be designated as the fund for genetic marker testing. The county treasurer shall deposit money that is collected pursuant to subsection 2 in the fund for genetic marker testing. The money must be accounted for separately within the fund.

4. Each month, the county treasurer shall use the money deposited in the fund for genetic marker testing to pay for the actual amount charged to the county for obtaining a biological specimen from a defendant pursuant to NRS 176.0913.

5. *The board of county commissioners of each county may apply for and accept grants, gifts, donations, bequests or devises which the board of county commissioners shall deposit with the county treasurer for credit to the fund for genetic marker testing.*

6. If money remains in the fund after the county treasurer makes the payments required by subsection 4, the county treasurer shall pay the remaining money each month to the forensic laboratory that is designated by the county pursuant to NRS 176.0917 to conduct or oversee genetic marker testing for the county. A forensic laboratory that receives money pursuant to this subsection shall use the money to ~~1:~~

~~—(a) Maintain and purchase equipment and supplies relating to genetic marker testing, including, but not limited to, equipment and supplies required by the Federal Bureau of Investigation for participation in CODIS; and~~

~~—(b) Pay for the training and continuing education, including, but not limited to, the reasonable travel expenses, of employees of the forensic laboratory who conduct or oversee]~~ *cover any expense related to* genetic marker testing.

Sec. 3. This act becomes effective on July 1, 2009.

