

ASSEMBLY BILL NO. 234—ASSEMBLYWOMAN GANSERT

MARCH 4, 2009

Referred to Committee on Judiciary

SUMMARY—Requires the collection of biological specimens for genetic marker analysis from persons arrested for a felony. (BDR 14-993)

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

CONTAINS UNFUNDED MANDATE (§ 1)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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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 genetic marker analysis; requiring that a biological specimen be obtained from a person arrested for a felony; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, if a defendant is convicted of a felony or certain other specified offenses, the court, as part of the defendant's sentence, must order that a biological specimen be obtained from the defendant and that the specimen be used for an analysis to determine the genetic markers of the specimen. (NRS 176.0911-176.0917)

Section 1 of this bill requires that a biological specimen be obtained if a person is arrested for a felony. This section also provides that if the person is convicted of the felony, the specimen must be kept, but if the person is acquitted or the criminal charges against him are dismissed, the forensic laboratory testing the biological specimen, the law enforcement agency collecting the specimen and the Central Repository for Nevada Records of Criminal History shall destroy the specimen and all records related thereto.



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

Section 1. Chapter 176 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a person is arrested for a felony, and a court or magistrate makes a determination that probable cause exists for the person's arrest, the law enforcement agency making the arrest shall:

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

(b) Before the person is released from custody, obtain a biological specimen from the person pursuant to the provisions of this section so that the specimen can be used for an analysis to determine the genetic markers of the specimen.

2. The law enforcement agency obtaining the biological specimen shall provide the specimen to the forensic laboratory that has been designated by the county in which the person was arrested to conduct or oversee genetic marker testing for the county pursuant to NRS 176.0917.

3. Any cost that is incurred to obtain a biological specimen from a person pursuant to this section is a charge against the county in which the person was arrested and must be paid as provided in NRS 176.0915.

4. A law enforcement agency shall not obtain a biological specimen from a person who has previously submitted such a specimen for an arrest and conviction of a prior offense unless the law enforcement agency, court or magistrate determines that an additional specimen is necessary.

5. If the criminal charge against the person for which a biological specimen was obtained pursuant to this section is dismissed or the person is acquitted at trial, the clerk of the court shall notify the appropriate law enforcement agency, the appropriate forensic laboratory and the Central Repository for Nevada Records of Criminal History of the final disposition of the criminal proceedings. The law enforcement agency, forensic laboratory and Central Repository for Nevada Records of Criminal History shall, upon notification of the dismissal or acquittal, destroy the specimen and all records thereof, unless the person was convicted of a prior offense for which the specimen must be maintained. If the person is convicted of the offense for which the specimen was obtained, the law enforcement agency, forensic laboratory and Central Repository for Nevada Records of



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Criminal History shall keep the specimen or result of the genetic marker analysis and all records thereof.

6. Except as otherwise authorized by federal law or 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 176.0911 is hereby amended to read as follows:

176.0911 As used in NRS 176.0911 to 176.0917, inclusive, *and section 1 of this act*, unless the context otherwise requires, "CODIS" means the Combined DNA Indexing System operated by the Federal Bureau of Investigation.

Sec. 3. 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 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



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1 county pursuant to NRS 176.0917. Any cost that is incurred to
2 obtain a biological specimen from a defendant pursuant to this
3 subsection is a charge against the county in which the defendant was
4 convicted and must be paid as provided in NRS 176.0915.

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

7 (a) A felony;

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

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

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

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

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

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

19 (1) Convicted in this State of committing an offense listed in
20 paragraph (a), (d), (e) or (f); or

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

24 (h) Failing to register with a local law enforcement agency after
25 being convicted of a crime against a child as required pursuant to
26 NRS 179D.450; or

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

30 5. A court shall not order a biological specimen to be obtained
31 from a defendant who has previously submitted such a specimen
32 *pursuant to section 1 of this act or* for conviction of a prior offense
33 unless the court determines that an additional sample is necessary.

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

42 (a) A court order; or

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



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

Sec. 4. 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]~~ *person* pursuant to NRS 176.0913 ~~[.]~~ *or section 1 of this act, and the person is convicted of the offense for which the biological specimen was obtained,* the court, in addition to any other penalty, shall order the ~~[defendant,]~~ *person,* 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]~~ *person* before or at the same time that any fine imposed by the court is collected from the ~~[defendant,]~~ *person;* 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]~~ *person* pursuant to NRS 176.0913 ~~[.]~~ *or section 1 of this act.*

5. 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:

(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 genetic marker testing.



Sec. 5. NRS 176.0917 is hereby amended to read as follows:

176.0917 1. The board of county commissioners of each county shall designate a forensic laboratory to conduct or oversee for the county any genetic marker testing that is ~~ordered or arranged~~ **required** pursuant to NRS 176.0913 or 176.0916 ~~[] or section 1 of this act.~~

2. The forensic laboratory designated by the board of county commissioners pursuant to subsection 1:

(a) Must be operated by this State or one of its political subdivisions; and

(b) Must satisfy or exceed the standards for quality assurance that are established by the Federal Bureau of Investigation for participation in CODIS.

Sec. 6. NRS 179A.075 is hereby amended to read as follows:

179A.075 1. The Central Repository for Nevada Records of Criminal History is hereby created within the Records and Technology Division of the Department.

2. Each agency of criminal justice and any other agency dealing with crime or delinquency of children shall:

(a) Collect and maintain records, reports and compilations of statistical data required by the Department; and

(b) Submit the information collected to the Central Repository in the manner approved by the Director of the Department.

3. Each agency of criminal justice shall submit the information relating to records of criminal history that it creates or issues, and any information in its possession relating to the genetic markers of a biological specimen of a person ~~[who is convicted of an offense listed in subsection 4 of]~~ **from whom a biological specimen is obtained pursuant to** NRS 176.0913 ~~[] or section 1 of this act,~~ to the Division. The information must be submitted to the Division:

(a) Through an electronic network;

(b) On a medium of magnetic storage; or

(c) In the manner prescribed by the Director of the Department, **➔** within the period prescribed by the Director of the Department. If an agency has submitted a record regarding the arrest of a person who is later determined by the agency not to be the person who committed the particular crime, the agency shall, immediately upon making that determination, so notify the Division. The Division shall delete all references in the Central Repository relating to that particular arrest.

4. The Division shall, in the manner prescribed by the Director of the Department:

(a) Collect, maintain and arrange all information submitted to it relating to:

(1) Records of criminal history; and



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(2) The genetic markers of a biological specimen of a person ~~who is convicted of an offense listed in subsection 4 of~~ *from whom a biological specimen is obtained pursuant to* NRS 176.0913 ~~or section 1 of this act.~~

(b) When practicable, use a record of the personal identifying information of a subject as the basis for any records maintained regarding him.

(c) Upon request, provide the information that is contained in the Central Repository to the State Disaster Identification Team of the Division of Emergency Management of the Department.

5. The Division may:

(a) Disseminate any information which is contained in the Central Repository to any other agency of criminal justice;

(b) Enter into cooperative agreements with federal and state repositories to facilitate exchanges of information that may be disseminated pursuant to paragraph (a); and

(c) Request of and receive from the Federal Bureau of Investigation information on the background and personal history of any person whose record of fingerprints the Central Repository submits to the Federal Bureau of Investigation and:

(1) Who has applied to any agency of the State of Nevada or any political subdivision thereof for a license which it has the power to grant or deny;

(2) With whom any agency of the State of Nevada or any political subdivision thereof intends to enter into a relationship of employment or a contract for personal services;

(3) Who has applied to any agency of the State of Nevada or any political subdivision thereof to attend an academy for training peace officers approved by the Peace Officers' Standards and Training Commission;

(4) For whom such information is required to be obtained pursuant to NRS 426.335 and 449.179; or

(5) About whom any agency of the State of Nevada or any political subdivision thereof has a legitimate need to have accurate personal information for the protection of the agency or the persons within its jurisdiction.

➤ To request and receive information from the Federal Bureau of Investigation concerning a person pursuant to this subsection, the Central Repository must receive the person's complete set of fingerprints from the agency or political subdivision and submit the fingerprints to the Federal Bureau of Investigation for its report.

6. The Central Repository shall:

(a) Collect and maintain records, reports and compilations of statistical data submitted by any agency pursuant to subsection 2.



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(b) Tabulate and analyze all records, reports and compilations of statistical data received pursuant to this section.

(c) Disseminate to federal agencies engaged in the collection of statistical data relating to crime information which is contained in the Central Repository.

(d) Investigate the criminal history of any person who:

(1) Has applied to the Superintendent of Public Instruction for a license;

(2) Has applied to a county school district, charter school or private school for employment; or

(3) Is employed by a county school district, charter school or private school,

and notify the superintendent of each county school district, the governing body of each charter school and the Superintendent of Public Instruction, or the administrator of each private school, as appropriate, if the investigation of the Central Repository indicates that the person has been convicted of a violation of NRS 200.508, 201.230, 453.3385, 453.339 or 453.3395, or convicted of a felony or any offense involving moral turpitude.

(e) Upon discovery, notify the superintendent of each county school district, the governing body of each charter school or the administrator of each private school, as appropriate, by providing the superintendent, governing body or administrator with a list of all persons:

(1) Investigated pursuant to paragraph (d); or

(2) Employed by a county school district, charter school or private school whose fingerprints were sent previously to the Central Repository for investigation,

who the Central Repository's records indicate have been convicted of a violation of NRS 200.508, 201.230, 453.3385, 453.339 or 453.3395, or convicted of a felony or any offense involving moral turpitude since the Central Repository's initial investigation. The superintendent of each county school district, the governing body of a charter school or the administrator of each private school, as applicable, shall determine whether further investigation or action by the district, charter school or private school, as applicable, is appropriate.

(f) Investigate the criminal history of each person who submits fingerprints or has his fingerprints submitted pursuant to NRS 426.335, 449.176 or 449.179.

(g) On or before July 1 of each year, prepare and present to the Governor a printed annual report containing the statistical data relating to crime received during the preceding calendar year. Additional reports may be presented to the Governor throughout the



1 year regarding specific areas of crime if they are approved by the
2 Director of the Department.

3 (h) On or before July 1 of each year, prepare and submit to the
4 Director of the Legislative Counsel Bureau for submission to the
5 Legislature, or to the Legislative Commission when the Legislature
6 is not in regular session, a report containing statistical data about
7 domestic violence in this State.

8 (i) Identify and review the collection and processing of
9 statistical data relating to criminal justice and the delinquency of
10 children by any agency identified in subsection 2, and make
11 recommendations for any necessary changes in the manner of
12 collecting and processing statistical data by any such agency.

13 7. The Central Repository may:

14 (a) In the manner prescribed by the Director of the Department,
15 disseminate compilations of statistical data and publish statistical
16 reports relating to crime or the delinquency of children.

17 (b) Charge a reasonable fee for any publication or special report
18 it distributes relating to data collected pursuant to this section. The
19 Central Repository may not collect such a fee from an agency of
20 criminal justice, any other agency dealing with crime or the
21 delinquency of children which is required to submit information
22 pursuant to subsection 2 or the State Disaster Identification Team of
23 the Division of Emergency Management of the Department. All
24 money collected pursuant to this paragraph must be used to pay for
25 the cost of operating the Central Repository.

26 (c) In the manner prescribed by the Director of the Department,
27 use electronic means to receive and disseminate information
28 contained in the Central Repository that it is authorized to
29 disseminate pursuant to the provisions of this chapter.

30 8. As used in this section:

31 (a) "Personal identifying information" means any information
32 designed, commonly used or capable of being used, alone or in
33 conjunction with any other information, to identify a person,
34 including, without limitation:

35 (1) The name, driver's license number, social security
36 number, date of birth and photograph or computer-generated image
37 of a person; and

38 (2) The fingerprints, voiceprint, retina image and iris image
39 of a person.

40 (b) "Private school" has the meaning ascribed to it in
41 NRS 394.103.

42 **Sec. 7.** NRS 179D.150 is hereby amended to read as follows:

43 179D.150 A record of registration must include, if the
44 information is available:



1 1. Information identifying the offender or sex offender,
2 including, but not limited to:

3 (a) The name of the offender or sex offender and all aliases that
4 he has used or under which he has been known;

5 (b) A complete physical description of the offender or sex
6 offender, a current photograph of the offender or sex offender and
7 the fingerprints and palm prints of the offender or sex offender;

8 (c) The date of birth and the social security number of the
9 offender or sex offender;

10 (d) The identification number from a driver's license or an
11 identification card issued to the offender or sex offender by this
12 State or any other jurisdiction and a photocopy of such driver's
13 license or identification card;

14 (e) A report of the analysis of the genetic markers of the
15 specimen obtained from the offender or sex offender pursuant to
16 NRS 176.0913 ~~or~~ *or section 1 of this act*; and

17 (f) Any other information that identifies the offender or sex
18 offender.

19 2. Information concerning the residence of the offender or sex
20 offender, including, but not limited to:

21 (a) The address at which the offender or sex offender resides;

22 (b) The length of time he has resided at that address and the
23 length of time he expects to reside at that address;

24 (c) The address or location of any other place where he expects
25 to reside in the future and the length of time he expects to reside
26 there; and

27 (d) The length of time he expects to remain in the county where
28 he resides and in this State.

29 3. Information concerning the offender's or sex offender's
30 occupations, employment or work or expected occupations,
31 employment or work, including, but not limited to, the name,
32 address and type of business of all current and expected future
33 employers of the offender or sex offender.

34 4. Information concerning the offender's or sex offender's
35 volunteer service or expected volunteer service in connection with
36 any activity or organization within this State, including, but not
37 limited to, the name, address and type of each such activity or
38 organization.

39 5. Information concerning the offender's or sex offender's
40 enrollment or expected enrollment as a student in any public or
41 private educational institution or school within this State, including,
42 but not limited to, the name, address and type of each such
43 educational institution or school.

44 6. Information concerning whether:



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(a) The offender or sex offender is, expects to be or becomes enrolled as a student at an institution of higher education or changes the date of commencement or termination of his enrollment at an institution of higher education; or

(b) The offender or sex offender is, expects to be or becomes a worker at an institution of higher education or changes the date of commencement or termination of his work at an institution of higher education,

➔ including, but not limited to, the name, address and type of each such institution of higher education.

7. The license plate number and a description of all motor vehicles registered to or frequently driven by the offender or sex offender.

8. The level of registration and community notification of the offender or sex offender.

9. The criminal history of the offender or sex offender, including, without limitation:

(a) The dates of all arrests and convictions of the offender or sex offender;

(b) The status of parole, probation or supervised release of the offender or sex offender;

(c) The status of the registration of the offender or sex offender; and

(d) The existence of any outstanding arrest warrants for the offender or sex offender.

10. The following information for each offense for which the offender or sex offender has been convicted:

(a) The court in which he was convicted;

(b) The text of the provision of law defining each offense;

(c) The name under which he was convicted;

(d) The name and location of each penal institution, school, hospital, mental facility or other institution to which he was committed;

(e) The specific location where the offense was committed;

(f) The age, the gender, the race and a general physical description of the victim; and

(g) The method of operation that was used to commit the offense, including, but not limited to:

(1) Specific sexual acts committed against the victim;

(2) The method of obtaining access to the victim, such as the use of enticements, threats, forced entry or violence against the victim;

(3) The type of injuries inflicted on the victim;

(4) The types of instruments, weapons or objects used;

(5) The type of property taken; and



(6) Any other distinctive characteristic of the behavior or personality of the offender or sex offender.

11. Any other information required by federal law.

Sec. 8. NRS 179D.443 is hereby amended to read as follows:

179D.443 When an offender convicted of a crime against a child or a sex offender registers with a local law enforcement agency as required pursuant to NRS 179D.445, 179D.460 or 179D.480, or updates his registration as required pursuant to NRS 179D.447:

1. The offender or sex offender shall provide the local law enforcement agency with the following:

(a) The name of the offender or sex offender and all aliases that he has used or under which he has been known;

(b) The social security number of the offender or sex offender;

(c) The address of any residence or location at which the offender or sex offender resides or will reside;

(d) The name and address of any place where the offender or sex offender is a worker or will be a worker;

(e) The name and address of any place where the offender or sex offender is a student or will be a student;

(f) The license plate number and a description of all motor vehicles registered to or frequently driven by the offender or sex offender; and

(g) Any other information required by federal law.

2. If the offender or sex offender has not previously provided a biological specimen pursuant to NRS 176.0913 or 176.0916, *or section 1 of this act*, the offender or sex offender shall provide a biological specimen to the local law enforcement agency. The local law enforcement agency shall provide the specimen to the forensic laboratory that has been designated by the county in which the offender or sex offender resides, is present or is a worker or student to conduct or oversee genetic marker testing for the county pursuant to NRS 176.0917.

3. The local law enforcement agency shall ensure that the record of registration of the offender or sex offender includes, without limitation:

(a) A complete physical description of the offender or sex offender, a current photograph of the offender or sex offender and the fingerprints and palm prints of the offender or sex offender;

(b) The text of the provision of law defining each offense for which the offender or sex offender is required to register;

(c) The criminal history of the offender or sex offender, including, without limitation:

(1) The dates of all arrests and convictions of the offender or sex offender;



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1 (2) The status of parole, probation or supervised release of
2 the offender or sex offender;

3 (3) The status of the registration of the offender or sex
4 offender; and

5 (4) The existence of any outstanding arrest warrants for the
6 offender or sex offender;

7 (d) A report of the analysis of the genetic markers of the
8 specimen obtained from the offender or sex offender;

9 (e) The identification number from a driver's license or an
10 identification card issued to the offender or sex offender by this
11 State or any other jurisdiction and a photocopy of such driver's
12 license or identification card; and

13 (f) Any other information required by federal law.

14 **Sec. 9.** The amendatory provisions of this act apply to a person
15 arrested on or after July 1, 2009.

16 **Sec. 10.** The provisions of NRS 354.599 do not apply to any
17 additional expenses of a local government that are related to the
18 provisions of this act.

19 **Sec. 11.** This act becomes effective on July 1, 2009.

