

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

**Seventy-Seventh Session
May 9, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:09 a.m. on Thursday, May 9, 2013, 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 nelis.leg.state.nv.us/77th2013. 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 Jason Frierson, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Lesley E. Cohen
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Wesley Duncan
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblyman Andrew Martin
Assemblywoman Ellen B. Spiegel
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Debbie Smith, Washoe County Senatorial District No. 13

Minutes ID: 1062



STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Thelma Reindollar, Committee Secretary
Colter Thomas, Committee Assistant

OTHERS PRESENT:

Bridgette Zunino, Private Citizen, Reno, Nevada
Lauren Denison, Private Citizen, Reno, Nevada
Jayann Sepich, Private Citizen, Carlsbad, New Mexico
Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office
Steve Gresko, Senior Criminalist, Forensic Science Division, Washoe County Sheriff's Office
Brian O'Callaghan, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
John T. Jones, Jr., representing Nevada District Attorneys Association
Kimberly Murga, Forensic Laboratory Manager, Criminalistics Bureau, Las Vegas Metropolitan Police Department
Steve Yeager, Deputy Public Defender, Clark County Public Defender's Office
Chris Frey, Deputy Public Defender, Washoe County Public Defender's Office
Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada
Janine Hansen, representing Nevada Families for Freedom
Michael Ginsberg, representing Progressive Leadership Alliance of Nevada

Chairman Frierson:

[Roll was called. Committee protocol and rules were explained.] We have one bill this morning and there is also a Judiciary Subcommittee that will convene after. I will open the hearing on Senate Bill 243 (1st Reprint).

Senate Bill 243 (1st Reprint): Revises provisions relating to genetic marker analysis. (BDR 14-137)

Senator Debbie Smith, Washoe County Senatorial District No. 13:

Good morning, Mr. Chairman and Committee members. I am here today to present Senate Bill 243 (1st Reprint). This is an important and powerful piece

of legislation. I had never met Bridgette Zunino, the mother of Brianna Denison, until I was approached to carry this legislation prior to the 2011 Session. I met Jayann Sepich, mother of Katie Sepich, at a DNA Saves luncheon. Let me be clear. Legislation regarding crime and the law have not been my passion. But the information at the luncheon I attended piqued my interest in the subject and over the past few years, I have become a believer in collecting arrestee DNA. It is today's technology to solve crime and save lives. I am personally invested in this issue because I, unlike Bridgette and Jayann, do not belong to the horrific club they do: mothers whose daughters have been murdered. Rather, I am one person who believes in the power of what we are able to do with this important technology.

The working group for this bill spent the entire interim session learning more about the Combined DNA Index System (CODIS) and the lab systems, and fine-tuning the language of this bill. Today I have with me several experts and supporters of this bill. Before they go into the details and the sections of the bill, I would like to give an overview of why there is a need for this legislation.

This bill is about public safety and justice. It can help solve crimes and get dangerous criminals off the streets, and it can exonerate individuals who were falsely accused and convicted. It has done both already across our country. Hundreds of wrongly convicted individuals have been exonerated through arrestee DNA and the majority of those individuals are minority. I would like to bring your attention to one recent major scientific study which has been done by a researcher at the University of Virginia ([Exhibit C](#)). I would like to share two quotes from the study:

DNA databases reduce crime rates, especially in categories where forensic evidence is likely to be collected at the scene—e.g., murder, rape, assault, and vehicle theft.

. . . larger databases are associated with lower crime rates during the years 2000 to 2008. The estimated magnitudes imply that expanding databases to include individuals arrested (but not convicted) for serious felonies—a common policy proposal—would result in a 3.2% decrease in murders, a 6.6% decrease in rapes, a 2.9% decrease in aggravated assaults, and a 5.4% decrease in vehicle thefts.

It is important to remember that we take DNA samples and send them to the federal database already. We already work with the system so we know what we are doing and that it is safe and secure. This legislation has already been supported by our President, former President Bush, Congress, and all 50 Attorneys General. Currently, we take DNA samples after conviction.

This bill would expand that so we would take a sample when someone is booked for a felony and provide a mechanism to pay for that. Twenty-five other states already take DNA at the time of booking. This bill would require law enforcement to collect a DNA sample when someone is booked for a felony just as they now collect fingerprints and take mug shots. The DNA sample would be sent to one of our laboratories but if, and only if, a judge or magistrate determines that there was probable cause for the booking. If not, the sample would be destroyed.

When a sample is submitted to our labs, they pull 13 specific genetic markers from the DNA and transmit them to the Federal Bureau of Investigation (FBI) system called CODIS. The sample is run through CODIS to see if the DNA matches any cases from around the country. Because CODIS is a federal program, it is not in the bill, but I know that it is something many of you may have questions about. I want to provide a few key points. Our lab that holds the DNA does not send the DNA itself to CODIS, just the 13 markers and a numerical identification (ID) number—no name, no social security number, or any other information. These 13 markers were specifically selected by genetic scientists because they contain our genetic information other than gender. For perspective, our DNA has three billion genetic markers in it. These 13 markers are enough to identify and differentiate samples. If there is a match between the sample and the CODIS system, all the FBI knows is what lab that specimen came from and must then contact that lab and provide the specimen number and that there was a match. The lab holding the DNA reruns the process and repulls the markers from the original DNA. This is to double-check that everything was done right. It is the reason the labs do keep the original DNA so they may double-check against any possible human or mechanical error in the original testing or labeling.

The Combined DNA Index System is sometimes referred to as a database and perhaps, like some of you, I think of something that is searchable but this could not be further from the truth. It is not accessible to anyone but select FBI laboratory staff who have undergone background checks and met other national certification standards. It is not accessible to other FBI personnel, local law enforcement, or other federal agencies. It is a very secure system.

This bill merely states that you must give a sample at the time of booking for a felony. The sample is not sent to the lab for analysis until probable cause has been established. This bill requires that anyone required to give a biological sample also be given clear instructions on when and how they could have their DNA sample destroyed or purged from the CODIS system. Finally, to pay for this program, the bill adds a \$3 administrative fee when anyone pleads guilty, no contest, or is found guilty of a misdemeanor or a felony.

To walk through the sections of the bill, sections 1 through 10 are definitions. Section 11 establishes the state database. Section 12 lists the basics of what the state lab can do with the DNA and sets up the protocols. Section 13 talks about when the DNA sample is taken. Section 13, subsection 8, deals with destroying the sample and requesting the destruction of the sample. Section 13, subsections 10 through 12, deals with the notification of destruction or denial of the request and subsections 13 to 14 deal with confidentiality. Section 14 is regarding procedures that are established by Department of Public Safety. Section 15 identifies the court assessment.

Section 16.3 creates a subcommittee of the Advisory Commission on the Administration of Justice. This subcommittee will be charged with the review of information related to DNA collection and will report to the next legislative session. This language was added in the Senate to ensure that we monitor this new program after it is established. The rest of the bill is amending old statute to reflect the changes adding CODIS where necessary.

You will hear compelling testimony but also facts and data to support the case for arrestee DNA. You will also hear opposition based on philosophical and ideological differences. You will hear about error. Yes, as long as there is human involvement in anything there will be error. We have error in crime investigation today and that will not change. You will be provided information that is based on an opinion written in 2006 at which time only four states had passed arrestee DNA. Much has changed since then and 25 states now collect arrestee DNA. Thank you, Mr. Chairman and Committee members, for your attention.

Chairman Frierson:

Thank you, Senator. I presume you prefer allowing the entire presentation before questions on provisions of the bill.

Senator Smith:

I would. Thank you.

Bridgette Zunino, Private Citizen, Reno, Nevada:

I would like to thank the Committee for the opportunity to speak before you today. I am Bridgette, Brianna Denison's mom. Five years ago, every parent's worst nightmare came true for me and my family. While my daughter, Brianna, was home from college on winter break, her sweet life was taken from me, from us. The impact that this has had on my family, her friends, and me is everything you could imagine, and worse. [Ms. Zunino continued to read from [\(Exhibit D\)](#).]

As more time has passed, and I have learned more about the law and how it works nationally and in other states, my involvement has become less and less about my family, and more and more about others. [Ms. Zunino continued to read from ([Exhibit D](#)).]

I am simply here to say that it is time to come into the twenty-first century and join the other 25 states that have already passed this law. Thank you.

Chairman Frierson:

Thank you very much. As always, thank you for sharing your story and the work you did during the interim and how you have educated people about the process.

Lauren Denison, Private Citizen, Reno, Nevada:

Good morning, Mr. Chairman, and members of the Committee. I am Brianna Denison's aunt. I am here to talk about the support we received from the community after Brianna went missing and her body was later found. We were amazed at the level of support from citizens who dedicated their time, day in and day out, as we searched for her body for about a month. There were sometimes 300 people who joined in the search. We formed the Bring Bri Justice Foundation in her memory, and as a support to others who might also be suffering through a similar horrific tragedy.

We are here today because we have statistically seen what arrestee DNA can do. We are willing to set aside our day-to-day lives to testify and bring an awareness to what this bill can do. If it can save one life, we may never know, but I believe that it will save many lives. I hope that you give it some great consideration. Thank you.

Jayann Sepich, Private Citizen, Carlsbad, New Mexico:

Mr. Chairman and members of the Committee, thank you for allowing me to share my story and to talk to you about this incredibly powerful tool. I have a short time today to persuade you to join the 25 other state legislatures and the U.S. Congress in the decision to use the power of DNA to not only solve crimes but also to exonerate the innocent. [Ms. Sepich read from ([Exhibit E](#)) and showed PowerPoint ([Exhibit F](#)).]

We had lost our daughter, Katie, to a monster and we needed justice. We needed to know who had done this and why. Most of all, we needed to know that he would be stopped from doing this again. The detective in charge of Katie's case told me that the only evidence they had was DNA. You see, Katie had fought so hard for her life that the blood and skin of her killer had been found underneath her fingernails. A DNA profile had been extracted and

uploaded into the national forensic database called CODIS. Detective Jones explained that once a week this evidence would be cross-referenced against the offender database to look for a match. This gave our family hope. We had the identity of our daughter's murderer; we just had to match it to a name. But in New Mexico, and in almost every other state, it is illegal to take DNA when someone is arrested. We have to wait until there is a conviction. [Ms. Sepich continued to read from [\(Exhibit E\)](#).]

You will be told reasons why Nevada should not use this incredible science. You will be told that DNA is very different from fingerprints because it contains our entire genetic blueprint, that to take DNA from someone when they have merely been arrested, not convicted of a crime, is a violation of privacy. This is very misleading. Our DNA is not private. We cannot leave a room without leaving our DNA. Furthermore, and this is extremely important, it is not our DNA that goes into CODIS. It is a DNA profile, and that is very different indeed. Our DNA strand has over 3 billion markers but only 13 go into CODIS, and these markers were selected by genetic scientists because these specific 13 markers have no potential to disclose any medical diagnostic information, nor do they disclose any physical characteristics. [Ms. Sepich continued to read from [\(Exhibit E\)](#).]

I would also like to assure you that anyone who is not ultimately found guilty of the crime for which they were arrested, by federal law, has the right to have their DNA profile expunged from CODIS. It is a very simple and completely thorough process. Furthermore, the Office of the Inspector General of the United States conducts annual, as well as random, audits to insure that expungement has been done properly. Since CODIS began over 20 years ago, there have been zero instances of DNA being manipulated or queried for other information beyond basic identification.

If you cast your vote for the lifesaving power of arrestee DNA, you will be joining 100 U.S. Senators, over two-thirds of the U.S. House of Representatives, 50 Attorneys General, and the President of the United States who have all gone on record as supporting arrestee DNA. I ask you, please, pass Brianna's Law. Thank you.

Chairman Frierson:

Thank you, Ms. Sepich, for your work over the years to educate myself and the Committee about these issues. I want to thank you all for sharing your stories as they are powerful. There are several questions from the Committee and I will start with one.

You mentioned the case of David Jones having been exonerated after spending some time incarcerated. Are you familiar with the details of that case? I am curious, if DNA were at issue and his DNA was not a match, what was the basis for him spending that much time until somebody else's DNA provided a match.

Jayann Sepich:

When he was originally convicted, that was early on and DNA was not as widely used as it is today. It was 11 years later that the DNA match was made and they realized that the two victims that he had been convicted of murdering were in that group. That was how he was exonerated.

Chairman Frierson:

My other question is on section 33 of the bill which discusses the Department of Corrections requiring persons who are no longer incarcerated and no longer on probation to come back and submit samples. It says, ". . . regardless of the date upon which the conviction is entered" Why is that in there if the other states that collect DNA upon arrest have that provision? Has there been any analysis of the constitutionality of it dating back regardless of someone having had a felony 30 years ago and the burden of requiring them to come back and provide DNA?

Jayann Sepich:

I believe that is part of the statute and refers to convicted DNA. That is giving the right to collect DNA from someone convicted. That is not pertaining to an arrest.

Chairman Frierson:

You are correct. That is clearly part of the existing statute.

Assemblyman Wheeler:

Thank you, Ms. Sepich, for coming by my office earlier this week to discuss these issues. I do have a true Fourth Amendment problem with this as I told you. What I like is the way that you can expunge if you are found not guilty or if the case is dismissed, but I believe that should be automatic. I understand your explanation where it would be cost prohibitive but I am wondering why it would be that, if the judge files the paperwork upon dismissal.

Jayann Sepich:

There are a handful of states that do automatic expungement. They have said the cost of doing it is more than double the cost of not doing automatic expungement. Part of the reason is because of the systems that communicate

between the judicial system and the labs. They are not automatically set up and it would be expensive to do so.

Assemblyman Wheeler:

Another thing that you said is that people are notified of their right to have their DNA sample expunged but they have to request expungement in writing. We may be looking at a bias of people who do not have the capability of following that process. It would seem to be worth the cost to help these people.

Jayann Sepich:

This is my personal opinion. The profile, as it exists in the database, never sees the light of day unless it matches to crime scene evidence. While it may be a burden for someone to fill out the paperwork to get their sample expunged, the greater good that can be done is that, if it matches crime scene evidence, it may be easier to identify that person.

Also, there is one use that is allowed with the CODIS offender profile and that is, it can be cross-referenced against the database for unidentified human remains. After 9/11, there were many people who were identified through CODIS because there were profiles in there.

Assemblywoman Spiegel:

I have a couple of questions and one of them is a follow-up to Assemblyman Wheeler's question. In other states where there is not automatic expungement, are folks allowed to use public defenders to help them with the paperwork?

Jayann Sepich:

Absolutely. Most of them do; that is routine.

Assemblywoman Spiegel:

Is that more cost-effective than automatic expungement?

Jayann Sepich:

All they have to do is fill out the form and mail it in. It takes a whole lot less time than other forms that have to be filled out. It is a very simple form.

Assemblywoman Spiegel:

My next question is, are there any states that have opt-in programs where people who are arrested are being allowed to voluntarily give a sample rather than being required?

Jayann Sepich:

No.

Assemblywoman Spiegel:

My last question is, could the database be used for familial searches?

Jayann Sepich:

I cannot answer that. Familial searching can only be done if it is approved to be done by that state crime lab and there would have to be a specific program. There are only two states that allow familial searching.

[Vice Chairman Ohrenschall assumed the Chair.]

Assemblywoman Cohen:

Ms. Sepich, I have been receiving emails from constituents. One of the big concerns is DNA samples in crime labs and backlogs. Can you address that? Are there backlogs right now? If this bill becomes law, are we going to prioritize crime scene DNA or are we going to prioritize arrestee DNA? Are we going to have some crime scenes that are waiting to be tested because we are testing a check forger?

Jayann Sepich:

What we have found in states that have enacted arrestee DNA is that offender DNA is not as labor intensive as crime scene DNA. Offender DNA is a much simpler process. Before Colorado had arrestee DNA, they did have a backlog. Colorado has a similar funding mechanism to what is in this bill which enabled them to buy equipment so they could then automate the offender samples. So what happened in Colorado is they actually have a much lower backlog than they did before arrestee DNA. Their turnaround time has gone from six weeks to less than two weeks. With the advent of arrestee DNA, and the purchase of automated equipment, we have seen backlogs greatly reduced.

Senator Smith:

I would like to add to that. We do have representatives from the crime labs here who can answer questions for you as well. For the first time, we actually have a funding mechanism that will provide resources to the labs to deal with their workload. One thing I want to point out is that after Brianna was murdered and they were trying to run a backlog of DNA, there had to be a community fundraising drive which we all participated in to be able to process that backlog. So this will actually do the opposite. There is a one-year process of implementation. There is sizable grant money available in addition to the funding mechanism, so I think it will have the absolute opposite effect. We will

not have to be out raising money through the community to try to process these samples.

Assemblywoman Cohen:

We have heard testimony in this Committee that the state is only taking in 40 percent of our assessments. I do not remember where it is stated in the bill but three dollars seems low on the list. I have concerns that we are not really going to see that much money coming in. Would you please address that?

Senator Smith:

That is part of the reason that we have the full year of implementation. We will be able to apply for significant grant funding. The labs can address the process that they will use when this actually goes into effect. When we looked at the possibilities this funding resource could provide to the labs, it was agreed that this was sufficient funding. We do know, especially during the recession, that with court assessments the collection has been done. We anticipate that that will start going up.

Assemblywoman Cohen:

Getting back to my first question on prioritizing, is it not true that we have a backlog of rape kits? How does that play into all of this?

Senator Smith:

If we may have those from the labs answer that when they come up, that would be appreciated.

Assemblyman Thompson:

Thank you, Senator Smith, for bringing this forward. Thank you all for meeting with me yesterday so we can clarify some questions that I had. I have two questions. The first question is, do you know how our federal delegation voted on that?

Jayann Sepich:

I am absolutely certain that your Senators voted for it because it was unanimous in the Senate. I can tell you that we had tremendous support from both Senator Reid and Senator Heller. I cannot tell you about the congressional delegation. I do know that it was a two-thirds majority.

Assemblyman Thompson:

My other question is on section 13, lines 30 and 42, page 4, where it says, "Upon booking the person into a city or county jail or detention facility, and before the person is released from custody, obtain a biological specimen" Are we swabbing them twice?

Senator Smith:

No. The point of this legislation is that they are swabbed when they are booked as Ms. Sepich indicated earlier in her testimony. It does not take place out on the street.

Assemblyman Thompson:

Okay, because the way I interpret it, they are swabbed upon booking and then when they are released. I would prefer before they are released because most times, we would know the conviction.

Jayann Sepich:

It is absolutely preferable and we have found in states that swabbing of the cheek is very much an administrative process. When booking takes place, the process of administering the mug shot, fingerprinting, and swabbing occurs. It is in there to make sure that, if for any reason it was missed during the booking process, the swab must be done before they are released.

Assemblyman Thompson:

So maybe the wording should be "and/or" because the way I read it, it is done at the front end and it is done when you leave.

Jayann Sepich:

Before this is implemented, there are regulations that are written and the regulations will be clear that it is done at the time of booking.

Senator Smith:

In addition to that, we have created the record here in testimony that the intent is certainly as we have described.

Vice Chairman Ohrenschall:

If someone is arrested and no charges are filed and they are released, as I understand the bill, it calls for holding on to the DNA for five years. Why five years? Why not immediately upon release?

Jayann Sepich:

To answer your question, as I understand it, if they are arrested and there is no probable cause for that arrest, the sample is immediately destroyed. It is not even analyzed.

Assemblyman Hansen:

The Fourth Amendment protects us from unreasonable searches on our persons. It seems to me when you rise to the level of a felony arrest that is a reasonable point. I think that part is fine. My question is, if you are arrested for a felony,

the concern of the district attorneys and the public defenders was that most of those are actually pled down. If they are pled down, will that DNA evidence still remain even though they are arrested for a felony but they are convicted for a gross misdemeanor or a misdemeanor? It would still remain in the system if they are convicted, in this bill?

Jayann Sepich:

The way the bill is written is if the felony charge is dismissed, they have the right for expungement. What happens is, if they are going to be pled down, they dismiss the felony charge and they charge them with a misdemeanor. If the felony charge is dismissed, they absolutely have the right to expungement.

Assemblyman Hansen:

I supported the bill last time and will probably do so again this time. I had a question on mug shots and fingerprints which are currently things they use in the system. Is there a process currently in law that allows you to expunge your fingerprints or your mug shots if, in fact, you are not convicted?

Jayann Sepich:

I know of only one state that allows that fingerprints be expunged and it is a similar process to this where they have to request that it be done.

Assemblyman Hansen:

So this bill actually provides an additional layer of protection that currently does not exist for most processes, so another plus for the bill. Thank you.

Senator Smith:

I agree with Assemblyman Hansen's comments. I can say that I, personally, after learning as much as I have about the CODIS system and DNA, am much more comfortable having my DNA profile done, as Ms. Sepich indicated, than having fingerprints. I have found through budget hearings that we have had a case in one of our state agencies where we have had boxes of fingerprints that were misplaced in a cabinet. That information has a lot of personal information on it versus this system where it is so secure and so highly privatized.

Assemblyman Duncan:

Good morning and thank you for your presentation. It is very moving. There are many different interests that we are weighing on this Committee and I appreciate you being here.

You talked about *Maryland v. King*, 567 U.S. ____ (2012) and the essence of that case being the reasonableness of a search and the privacy interests of

someone who has been arrested for a felony versus the government interest in solving crimes. So that is the constitutional intersection that we are talking about. I have heard the arguments that the DNA profile is the twenty-first-century fingerprint. I have also heard the counterargument that there is a much greater expectation of privacy in your DNA because it can show a lot more than what a fingerprint can.

In helping me to understand this, the DNA profile that is in CODIS is a series of numbers. Does the government still have your DNA swab that contains all of the other information or is it simply just the DNA profile?

Jayann Sepich:

The actual DNA specimen that was swabbed is retained and it is retained under very, very secure conditions. The only people that have access to that are the state lab personnel and only specific ones under specific circumstances. The reason they retain it is that when that match is made, before they even see whose name it belongs to, they get the original specimen and retest it to make sure there were no mistakes, either human or mechanical. That is why they keep it, to double-check for accuracy and to protect the original person from errors before the name is released.

I would like to refer to Chief Justice Roberts who was talking in oral arguments about the expectation of privacy of your DNA. He made the comment that we really do not have an expectation of privacy of our DNA because we leave it everywhere we go ([Exhibit E](#)).

Assemblyman Duncan:

I am trying to think of other contexts. For example, the government could not go into our homes and seize our medical or personal records and store them and promise not to read them. Can you address that from a constitutional perspective? Does the government interest in solving crimes outweigh the expectation of privacy? Is that the argument?

Jayann Sepich:

That is a very, very important argument. When they take your fingerprints, those are attached to your permanent arrest record. The fingerprint database can be searched for background checks by employers, but CODIS cannot be searched. It is only available to law enforcement when the match is made. In every state in this country, when a baby is born, his heel is pricked and blood is taken and sent to a health lab where his genetics are checked. If our government really was interested in having the information that is in someone's DNA, they could get it very easily. That is not the purpose of this. The purpose of this is to identify those who have committed heinous crimes.

[Chairman Frierson reassumed the Chair.]

Assemblyman Duncan:

Thank you. My next question is the expungement process. Do you know what the participation rate of the expungement process is in other states? Also, in terms of CODIS, how does the federal government confirm to the person who has requested expungement that their DNA has actually been expunged?

Jayann Sepich:

I do know that the expungement varies from state to state. I do not know a percentage of who has requested expungement. I can tell you it is in this statute, in Nevada, that if someone requests expungement, they must be notified, in writing, that either the expungement was done or that it was not done and why. Maybe they were not eligible; they thought they were but they were not and here is why. That is part of this statute—that they will be notified and there is a time frame.

Assemblyman Carrillo:

Section 12, subsection 1, paragraph (c), subparagraph (6), states that relatives of missing persons will be maintained in a database. Will these people also be subject to search of their DNA based on matches with crime scene evidence, or will they be separated out?

Jayann Sepich:

That is a separate database, a missing person's relatives who voluntarily have put that into the database. It is not open for search against the crime scene evidence and is prohibited by law. That database can only be used to identify missing persons or unidentified remains.

Assemblyman Carrillo:

What guarantee does an individual have that their DNA will be erased from CODIS after expungement? Is there a separate letter from the federal government or would the federal government communicate back to the state-level DNA database that the erasure has occurred? Would the individual be able to obtain a copy of that proof?

Jayann Sepich:

The way the system works is that the national database comprises records uploaded from the database at the state level. There is a syncing process which takes place once a week. When the state expunges a DNA profile from their database, it is expunged from the national database during the syncing which takes place once a week.

And to answer your question, the Office of the Inspector General conducts audits, annually and randomly, to make sure that all expungements have taken place. The audits are available online.

Assemblyman Carrillo:

When you say online, is that referring to expungements that have taken place?

Jayann Sepich:

No. No one outside of the FBI and specific personnel can see that. The audits are available online showing which state was audited and when the audit took place. It does not show whose DNA was expunged.

Assemblyman Carrillo:

The individual would not be able to see that.

Jayann Sepich:

They will be able to see that the audit has taken place. In Nevada, the individual will get a letter saying their specific expungement has taken place.

Assemblywoman Fiore:

My question is on the cost of expungement being double the cost of implementation. It concerns me that when there is no conviction of the felony, then it takes up to five years to get your DNA out. Does it not?

Jayann Sepich:

No.

Assemblywoman Fiore:

So if you are not convicted of the felony and the person could not afford to get their record expunged, how can we make this bill more fair? It is easy to get in the system but doubly hard to get out.

Jayann Sepich:

I see what your concern is. It is not doubly hard to get it out. Let me give this example. If I were arrested for a crime and the charges were dismissed, all I would have to do to get that out is take the paper that says the charges were dismissed and fill out a form requesting expungement. I would put those two pieces of paper in an envelope and mail it. It would go to the repository where they would verify that I am indeed eligible for expungement. There would be an order for that expungement to take place. It would not take five years. It would be six weeks from verifying that I am eligible for it that the expungement has taken place, and that I am notified that the expungement has taken place.

If we relied on automatic expungement where people would have to follow through on each and every step, I think there is more of a chance that expungements might not take place when they are supposed to than if we rely on individual requests to have expungement done. I think it is a good system. I have watched it work in New Mexico and Colorado, and it works. It is thorough and it is complete.

Chairman Frierson:

Is there a section that addresses that timeline? On page 6 of the bill, section 13, subsection 8, paragraph (b), subparagraph (2), discusses five years and subsection 9 goes into the six-week period.

Senator Smith:

The five years is referring to the arrest or conviction being reversed, or if you have not had an additional criminal charge for five years. It is not related to whether you can request expungement for five years.

Jayann Sepich:

What this refers to is someone who has requested expungement and has not had a subsequent felony arrest within five years. If he is requesting expungement and has had a subsequent felony arrest during that time, and it has not been resolved, then he is not going to get his first one expunged because they would have to take another sample for that new arrest.

Assemblywoman Fiore:

As a businesswoman who fingerprints all my employees and does background checks before we are allowed to hire and implement their position, we go through the repository here. As you walked us through how simple and easy it is, I want you to understand that it is really not. We had testimony here saying the state of Nevada lost 65,000 records since 2007, which is six years that records are sitting there that have not been implemented into our system. So this is a big issue on this bill and how to make sure that we get this out of the system.

Jayann Sepich:

Are you talking about fingerprints?

Assemblywoman Fiore:

If we are having such an issue on criminal records in our state, why do you think these records are going to flow through very simply?

Jayann Sepich:

There are different procedures for fingerprints than there are for DNA. They are different systems. I cannot speak, specifically, to the state of Nevada. I can only speak to what I have seen in other states. Obviously, there could be differences. We can have the labs respond to that because they have systems set up in response to some problems.

Chairman Frierson:

Are there any other questions from the Committee? Ms. Sepich, I want to put on the record this notion that if you are arrested for a felony that is either dismissed or reduced, or you are acquitted, but also if you negotiate a case down to a misdemeanor, it is your understanding that that would be considered a dismissal for the purposes of this statute. So if you are arrested for burglary and you negotiate your case to a petty larceny misdemeanor, your intention in the bill is that that means the burglary charge was dismissed and, therefore, you would be covered under the provisions that remove folks who have their charges dismissed.

I wanted to make sure that that was consistent with what you and I talked about and confirm with Legal whether or not anything needed to be clarified or if making it part of the legislative history was sufficient.

Jayann Sepich:

That is absolutely correct that that is the intention of the bill.

Brad Wilkinson, Committee Counsel:

Mr. Chairman, I believe that is enough. That is how I understood the bill.

Chairman Frierson:

Thank you. Are there other questions from the Committee?

Assemblywoman Diaz:

My question is, are we ready to implement as of July 1, 2013?

Jayann Sepich:

That date is to implement taking the fee. The implementation of swabbing the cheek does not start until 2014. It is a full year after that swabbing is implemented.

Assemblywoman Diaz:

For the interim study that we are charging the subcommittee with, I do not feel we are giving them specific topics or areas of concerns on this. Why are we leaving it so open-ended and not focusing on areas of possible concern?

Senator Smith:

That language was crafted with those from the community who had expressed concern about whether this bill would cause any profiling or any issues that are unanticipated. We felt the broader language would allow the subcommittee to address any of the issues around this new implementation. You can see that some specific members were added to the subcommittee to make sure they have input as to what the subcommittee will discuss and the type of report that will come forward for the next legislative session. I was more comfortable with the broad nature to allow them some freedom to have the discussions they would like rather constraining that ability.

Assemblywoman Diaz:

I want to make our intent clear on the legislative history, that hopefully the reason why it was placed in there is not ignored and that that issue is truly addressed by the subcommittee. To me and for my community, that is a huge concern and if some communities are being impacted more than others, I would really want to know that.

Senator Smith:

I could not agree with you more, Assemblywoman Diaz. As I stated in my original testimony, this language was developed in concert with Mr. Boulware and with Senator Ford for that very purpose. When the bill was amended in the Senate, there was considerable attention paid to that issue. I made my personal commitment to follow that through as well.

Assemblyman Ohrenschall:

Thank you, Senator Smith, for bringing this bill. In Nevada, we have a lot of felony crimes, many that are not so in other states. If a person goes into a casino and attempts to cheat at a game, that can often be prosecuted by unique felonies. We have the other run-of-the-mill felonies that other states have such as embezzlement, insurance fraud, and shopliftings that are charged as felony burglaries. That is where I have issues with arrestee DNA for all felonies versus just nonviolent felonies. Could you elaborate on that about what is happening in Virginia and spreading that out to those nonviolent property crimes?

Jayann Sepich:

What we have found in the 13 states that take DNA for all felony arrests are the crimes that are being identified through nonviolent arrests. The one that resonates most strongly is in my home state of New Mexico. When we originally passed it in New Mexico, it was for violent arrests only. In 2001 we expanded it to all felony arrests. The first year that we had all felony arrests, we kept close statistics on the difference that it made because there were questions. Six homicides were identified that first year through our arrestee

DNA database. Only one of the six homicides that was identified was through a violent arrest. The other five were through nonviolent arrests—one was tampering with evidence, another was receiving stolen property, and one was a hot check. In Virginia, when there was a match to forgery, 17 percent of those matches were to murders and 26 percent were to sexual assaults ([Exhibit G](#)). It may be counterintuitive to think that someone would identify as a violent criminal from a nonviolent address but the statistics show differently.

Chairman Frierson:

Are there other questions from the Committee?

Assemblyman Carrillo:

Given the expungement process is not automatic in the bill, have the bill sponsors considered how that might work for people who are outside of the country, for example, undocumented immigrants who are removed or deported after a felony arrest?

Jayann Sepich:

What is involved is sending a letter along with the forms that say they were acquitted or the charges were dropped. That might be a little more difficult if you were outside the country, but all they have to do is send the forms in and request the expungement.

Assemblyman Carrillo:

Are these forms in the language of their countries?

Jayann Sepich:

I cannot answer that.

Senator Smith:

We can have the lab answer that question about what the intention would be.

Chairman Frierson:

Thank you, Ms. Smith. There being no other questions, I invite folks to come up in support of S.B. 243 (R1) and encourage folks to say they agree unless they have something to contribute that has not already been addressed.

Senator Smith:

Mr. Chairman, if I may, I am going to go back to my committee as they are waiting for me. I would like to take a minute to thank the Committee for the attention you gave to the hearing this morning and the consideration you have given to these family members. I want to thank them for their work. I also want to make sure that I acknowledge Assemblyman Hickey who was the joint

sponsor on this legislation. I appreciate his support and the work he has put in to help us get there.

I just want to close by reiterating that in our society, we have a very small number of people who commit a very large number of crimes. If you look at the study from the University of Virginia, it is very detailed but it also deals with people who commit nonviolent crimes, are then repeat offenders, and commit violent crimes. There are several charts that show rates that are very alarming about repeat offenders ([Exhibit C](#)). The power of this legislation is that these people who are committing crimes over and over again can absolutely be stopped with this legislation. I cannot say enough times that that is the power of this technology. Thank you for your time.

Chairman Frierson:

Thank you, Senator. I invite those here to provide testimony in support to come forward.

Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office:

Thank you, Mr. Chairman and members of the Committee. I am here to express our support of S.B. 243 (R1). We participated in several meetings during the interim to work through the mechanics of this legislation to make sure that Nevada does it right. We thank this amazing team for having the boldness and perseverance to press on with this endeavor and to Senator Smith for bringing it forward. Renee Romero, director of our forensic science division, is not able to be here for questions but with me is Steve Gresko who is the CODIS administrator for the lab. He can address any questions you may have. I am open for questions as well.

Steve Gresko, Senior Criminalist, Forensic Science Division, Washoe County Sheriff's Office:

I am the CODIS administrator for the state of Nevada. I am responsible for all profiles from Las Vegas and Washoe County that filter through our state up to the national level. I would like to make a couple of points of clarification from some statements that were made earlier. With regard to familial searching, there are currently four states—Virginia, Colorado, Texas, and California—that actively search their database with familial-searching software. The CODIS software itself does not have the capability to do familial searching.

Another question was asked about collecting samples from people who voluntarily want their DNA put in which we currently do in Nevada. At this time, we have no backlog of sexual assault samples or database samples at the Washoe County Sheriff's Office.

Chairman Frierson:

Thank you. Are there any questions from the Committee?

Assemblyman Ohrenschall:

My question has to do with the forensic laboratory in section 13, subsection 11, paragraph (a) on page 7. If the lab determines that it is not going to expunge someone's DNA who has requested it be expunged, it says that the person will be notified as soon as reasonably practicable. How long do you think that might be and during that period, would that person's DNA be subject to search, either by Nevada authorities or the FBI?

Steve Gresko:

I do not know how that scenario would come to the laboratory. I am the one who will expunge the profiles and I will do so when I get an order from the Central Repository telling me to expunge. I would defer your question to the Central Repository because they process the requests for expungement along with the required paperwork and verify that the request does indeed require expungement. If they make a determination that some qualifying event took place in the interim, I assume they will send a letter back to the individual saying there was a subsequent qualifying event and that the individual's profile will not be expunged. If they determine it needs to be expunged, the Repository will send a letter to me and I will expunge it.

Assemblyman Ohrenschall:

If you were to expunge the petitioner's DNA sample, how does the expungement happen at the FBI level? Do you or the Central Repository notify the FBI?

Steve Gresko:

When I get the request for expungement, that same day I go to my CODIS machine and search for the profile. I bring the profile up and simply right-click on the profile, and click delete. The CODIS software has built-in checks that will immediately expunge the profile. It deletes it from the database. It is gone that fast.

Ms. Sepich's testimony was absolutely spot on when she said that the only thing the FBI has is what we send them. When I remove a profile from my database, it is no longer there. Every week, at 7 p.m. on Fridays in Nevada, we send a record of everything that we have. It is going to look for new profiles that we give them and if it has a deletion, it is also going to recognize that. I immediately get what is called a reconciliation report from the FBI and this record is what the Office of the Inspector General uses to verify that we have indeed expunged profiles that required expungement. I have reconciliation

reports that show that I no longer have it in my database and I have the FBI's reconciliation report that says they no longer have it in theirs.

Assemblyman Ohrenschall:

When you do that deletion on the computer, does that also delete the physical sample or is that a separate process?

Steve Gresko:

We have a separate database from CODIS that tells us who that specimen belongs to, their personal identifiable information. That will be erased from our records and on the same day, I will go into our storage facility and physically destroy the sample as well. Theoretically speaking, if that profile was not expunged and it matched to something, I would not know who the person was because their sample is no longer in the lab and I removed their record from our system.

Assemblywoman Spiegel:

When the expungement is completed, would the person whose sample and records it was be notified with documentation that it was completed?

Steve Gresko:

Our current practice is that we do have an expungement policy for convicted offenders as well. We do not send them a letter notifying that them that it has been removed. Usually, that process takes place through an attorney but I assume we will generate a formal reporting system to let people know that it has been done.

Assemblywoman Spiegel:

My other question is related to the accuracy of the data and the database. When there is an audit and internal quality control procedures, how often are there errors in a database?

Steve Gresko:

To which errors are you referring? Errors in the DNA profile?

Assemblywoman Spiegel:

Errors in DNA profile.

Steve Gresko:

In my experience with the lab, we have never gone back to test the sample and had a different answer.

Assemblywoman Spiegel:

What types of errors do you see?

Steve Gresko:

Typical human errors can sometimes occur, for example, during intake at the prison when there is a big lineup. They will put the wrong swab in the wrong envelope, things of that nature. They will notify us that a mistake was made if the DNA profile is not matching later on, or there was a mistake made with the fingerprints.

Assemblyman Hansen:

There was mention of backlog of a sexual assault kit. Could you address that, and concerns over potential errors in the lab process? What do you have in place to ensure the integrity of the DNA samples is protected? What do you do to ensure, as much as humanly possible, that samples are not contaminated in any way?

Steve Gresko:

To answer your first question, we do not have a backlog of sexual assault kits at the Washoe County Sheriff's Office. With regard to your concerns of potential errors, we are an accredited laboratory and we take great care to make sure the work that is performed in the laboratory is of the highest quality. We put on lab coats, gloves, and face masks when we enter the laboratory. We work in molecular biology hoods to make sure things that might be floating around in the air do not make it into our test tubes. We follow all of the guidelines that are required by the FBI of every forensic laboratory.

Assemblywoman Cohen:

Can you address my priority question from earlier in the hearing?

Steve Gresko:

They follow a different pathway in the laboratory. Most laboratories have different personnel assigned to those tasks. You have analysts who only do casework so we will have zero impact on which casework is done. It is the same in our laboratory. We have different personnel to handle the database side.

Assemblywoman Dondero Loop:

Is there only one repository in Nevada? Do the fingerprints go to the Department of Public Safety or do they stay at the police department? Is there only one spot where these are stored?

Steve Gresko:

I am not an expert in this field but it is my understanding that all of the records that are collected at the time of arrest do eventually go to the Central Repository in Carson City.

Assemblyman Carrillo:

In section 12, it indicates that each forensic lab will come back with their own protocols to collect, submit, analyze, identify, store, and maintain DNA samples. How do we guarantee uniformity across the state if a crime lab stores samples differently from another lab?

Steve Gresko:

It is true that we have our own protocols separate from Las Vegas. They use different kits than what we use, the same way that California uses a different kit, the same way New Mexico uses a different kit. The way that the FBI got uniformity into the process was that they chose 13 specific markers. I might use a different chemical test to develop a profile for those 13 markers but everybody is looking at the same thing. When I upload my profile to CODIS, it is 13 specific locations on the DNA molecule, the same 13 that every other lab is looking at. There is uniformity in the specific regions of the DNA molecule that we are looking at, so Las Vegas can use separate protocols from us but at the end of the day, we are both getting the same information.

Assemblyman Carrillo:

Would you say you have a good working relationship with the Las Vegas lab, kind of like a small community among yourselves?

Steve Gresko:

Yes, we have an excellent working relationship with them. We meet every other summer to go over different methods that we are using and we talk frequently. They have a CODIS administrator who fills the same role as I do and we talk weekly.

Assemblyman Carrillo:

So then you are well aware of the few lab mistakes that they had and where people actually spent time behind bars. You are quite aware that that does happen?

Steve Gresko:

Yes, I am aware.

Assemblyman Ohrenschall:

My question has to do with section 12, subsection 1, paragraph c, subparagraph (6) that the DNA of relatives of missing persons will be in the database. Will those persons' DNA be subject to search if there is a criminal investigation, or will they be segregated so they are not part of the overall DNA database? If so, what safeguards will there be to make sure they are segregated?

Steve Gresko:

With regard to missing persons and unidentified human remains samples, when we upload those into CODIS as a missing person or relative of a missing person, that sample can only be searched in CODIS for that express specific purpose. So if someone came under suspicion for an unrelated criminal action, law enforcement would still be required to go out and get an additional sample to search it in the criminal side of CODIS. It would have to be a separate collection.

Assemblyman Ohrenschall:

So that is federal regulation right now under the CODIS system?

Steve Gresko:

It is.

Assemblyman Ohrenschall:

Okay. Would you be able to let us know where that is?

Steve Gresko:

It can be found in the National DNA Index System (NDIS) procedures. The FBI recently released it so it is available on their website.

Chairman Frierson:

Are there any other questions from the Committee?

Assemblyman Martin:

With the collection of the DNA in the labs, are there strict chains of custody maintained? To that end, are there inspections of the lab by other labs, like a peer review system among crime labs for DNA? I am concerned about keeping track of everything and making sure everything is accurate.

Steve Gresko:

With regard to arrestee and convicted offender samples, there is no chain of custody associated with them. They come into the laboratory and we do not consider them evidence. It is the reason why, if there is a match to a crime

scene, we pull the profile again and make sure it matches. Then we inform the law enforcement agency that there is an investigative lead, but that they still need to go out, find that individual, and collect a reference sample with the chain of custody and submit it to the laboratory. That is the sample that would be used to arrest, prosecute, and, theoretically, convict. We have never proceeded to arrest and conviction based off just a CODIS match.

Chairman Frierson:

Are there any other questions from the Committee? [There were none.]

**Brian O'Callaghan, Government Liaison, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department:**

We are in full support of this.

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:

I am here to express our support for this bill. I submitted correspondence detailing the reasons why we believe this bill makes for good public policy and also a copy of the brief filed by the 50 states' Attorneys General in the U.S. Supreme Court case. [See ([Exhibit H](#)) and ([Exhibit I](#)).]

John T. Jones, Jr., representing Nevada District Attorneys Association:

We are here in support of this measure.

**Kimberly Murga, Forensic Laboratory Manager, Criminalistics Bureau, Las Vegas
Metropolitan Police Department:**

We are in support of this bill.

Chairman Frierson:

Is there anyone else in Las Vegas wishing to offer testimony in support? [There was no one.] I invite those wishing to offer testimony in opposition to come up.

Steve Yeager, Deputy Public Defender, Clark County Public Defender's Office:

Good morning, Mr. Chairman and members of the Committee. Under the standing rules of the Committee, I am here in opposition to the bill. I did submit some proposed amendments along with a letter explaining those amendments. [See ([Exhibit J](#)) and ([Exhibit K](#)).] I do believe the amendments are reasonable and of course, the amendments assume that the U.S. Supreme Court is going to sanction this kind of activity. We are still waiting to see whether that is going to happen and we should know very soon.

In terms of expungement and destruction, we are firmly in belief that expungement be an automatic process. On behalf of the public defender's

office, my clients simply are not going to take the steps, or do not have the wherewithal to take the steps to request expungement. I think the expungement process is more difficult than what was explained. If you look at the language of the bill, they have to obtain certified court records, or affidavits from law enforcement. It is not as simple as filling out a piece of paper. That takes some work and some financial cost to be able to obtain those documents. To the extent that the public defender's office can help, we are willing to do that but, obviously, that is going to increase the burden on us.

If the answer is that automatic expungement is too difficult or too costly, then perhaps this is something we should pause and think about. My position on this is, if we are going to do this, we need to do it the right way. The right way is automatic expungement.

Our position on the five years is it is too long. It should be a period of more like one year. Certainly most crimes do not even have a five-year statute of limitations so a filing would not even be possible. In addition, we did have some amendments about being more specific about what this subcommittee is to analyze. I think it does make sense to put that information in there but also have a catch-all provision where the subcommittee can explore any other issue they want.

If I could go back to the expungement process, our amendment would have the expungement process initiated by the district attorney's office. That makes sense because the district attorney is the common denominator whether the case is denied, dismissed, or negotiated. The district attorney is always going to be there, and when they are closing out their file, they simply could initiate that process.

I do not have any doubt that this is powerful technology that will solve crimes and potentially exonerate people. I am not here to debate that. The evidence is there and it is undisputable at this point. But with that power comes great responsibility. We have heard that this is fingerprinting of the twenty-first century. I do not think that is accurate. A fingerprint is on your exterior. It would be analogous to you driving down the street and you are looking at the outside of somebody's house. You see what the house looks like and you see the number plate on the house. But DNA is very different; it is much more powerful than a fingerprint. It would be like having a key to that house, being able to go inside, seeing where the things are, and what belongings somebody has. We are recognizing that implicitly because we are talking about expunging it from the system. If it was the same as a fingerprint, I do not think we would be having that discussion because we would not have the concerns that we have with DNA.

You have heard of examples of abuses, of breakdowns in the system. I agree with Senator Smith. As long as humans are involved, there are going to be mistakes. Humans are not perfect. We have to be willing to accept that if we are going to accept this kind of program. But what this body should do is think about what safeguards we can put in. How can we make this work to the best of our ability so we limit those mistakes because we know they are going to happen.

As a state, to me this question is about where are we going to draw this line in terms of taking DNA. Right now, that line is drawn at conviction and that is under statute. Now there are a lot of places we could draw the line. We could simply say we are going to take DNA from everyone at birth. That certainly would solve a lot of crimes and it certainly would exonerate the innocent. I think as a society and as a committee, we are not comfortable drawing the line there at birth nor are we comfortable drawing the line at when you get a driver's license. This is a question about where that line should be drawn, and I think the amendments that are proposed simply seek to move that line a little bit to felony arrest rather than all arrests. I urge your support of the amendments. I think they are reasonable and are brought forth in a spirit of compromise. I am happy to answer any questions that the Committee might have about the proposed amendments or about any other issues on this bill.

Assemblywoman Dondero Loop:

Mr. Yeager, am I understanding that if these proposed amendments were agreed to that you would, in fact, support this bill?

Steve Yeager:

First, I should back up. I am withdrawing the amendment about the effective date because I do think Senator Smith was accurate that the implementation of this program would be a year down the road. If these amendments were accepted, I would be neutral on this bill. I would not oppose it.

Assemblywoman Dondero Loop:

My understanding is when you propose an amendment, you propose an amendment because you would like the bill to be slightly different than it is in the form that it was presented and so, therefore, if you get your way on that, it seems to me you would support that bill.

Chairman Frierson:

It is not that uncommon for folks to say we think this bill is bad but these amendments would make it not as bad.

Steve Yeager:

My concern there is that we are still waiting to hear what the Supreme Court is going to say. If the Supreme Court comes down with an opinion that says this is okay, this is constitutional, then a lot of my concerns about the bill in total are going to be removed. I purposely have not gone the Fourth Amendment route here because that is in front of the Supreme Court. Frankly, my opinion does not really matter on that issue. We are going to hear from the Supreme Court of the United States. Now if the Supreme Court comes forward and says this is constitutional, I think I could get behind this bill with the amendments. But again, that is a policy consideration. I still have some constitutional questions but, thankfully, that will be resolved here in the next couple of months.

Assemblyman Duncan:

For me, this whole argument hinges on the reasonableness of the search. I want to drill down on the expectation of privacy aspect that you brought up because my understanding of CODIS is that in CODIS, there is a DNA profile that is essentially numbers. Is the expectation of privacy that you are talking about in those numbers? My understanding is that it does not show familial relationships and it does not show genetic predispositions for diseases. And so, is the expectation of privacy of the DNA in the actual DNA that is sitting in a lab somewhere, or in the DNA profile in CODIS?

Steve Yeager:

That is a good question. I think when the Supreme Court was looking at it, they did it in a couple of different ways. One is the expectation of privacy in terms of the actual initial swab, allowing someone to go into your mouth and take the swab and then, of course, the expectation of your DNA. I do agree with you inasmuch as I understand the technology, what goes into CODIS is 13 identifiers. They only tell you about gender and not about anything else, so I think the expectation of privacy really would be the sample itself that is maintained in the lab. That sample could potentially be used to find out other things about other people.

We have to keep in mind when we heard some testimony today that DNA has advanced considerably in the last ten years. There is no reason to expect that those advances will not continue to progress. In fact, I would fully expect that so if we have this conversation ten years down the road, we might be having a different conversation about what is possible to extract from someone's DNA and potentially about what is possible to extract from CODIS. I do trust the scientists that these 13 indicators do not tell you much about somebody, but I think that the privacy is that they have your DNA. It is true that we leave our DNA everywhere we go and none of us could complain if someone walked in

here and did a DNA swab of this cup that I have, but that is a very different thing than to take a swab out of somebody's mouth. That is where, I think, the Supreme Court is looking at the issue; is that a reasonable intrusion or is that reasonable given the governmental interest. Again, I am not really taking a position on it. I have opinions on it but, thankfully, we are going to have the justices of the Supreme Court tell us what the law of the land is going to be in that regard.

Assemblyman Duncan:

So the inquiry for this Committee is balancing the government interest in solving crimes versus the intrusive nature of a buccal cheek swab upon arrest of a felony, and the expectation of privacy in the DNA profile in CODIS. Is that accurate?

Steve Yeager:

Accurate with a caveat that the actual sample of the DNA is kept here locally. That is what the Committee is to consider. I think that is a policy determination this Committee is looking at. Is that appropriate for that governmental interest? The line has to be drawn somewhere and to me, this is a question of where are we going to draw that line as a policy and as people in the state of Nevada?

Assemblyman Hansen:

It seems to me on the government interest side of it, what we did not discuss is the reasonable protection of the citizens from people who are criminals. There were several crimes that have been committed that possibly could have been avoided completely had we had this technology in place. I am wondering on the balancing act that my colleague just mentioned, where do you see the government's responsibility with using this technology to ensure a certain level of protection for their citizens? A great deal of the duties of law enforcement is preventive in nature, not merely responding after the fact.

Steve Yeager:

You are absolutely right about this. The technology is powerful and it can be used to solve crimes and protect the public. I bring forth the idea that simply taking DNA from everybody regardless of whether they are arrested will accomplish the same thing, and actually be more effective, solve more crimes, and have a more accurate conviction rate. The amendment I am proposing would draw that line at a violent felony arrest. The bill itself draws it at any felony. I am advocating that line be drawn a little bit differently.

Assemblyman Hansen:

I have a quick question on the mug shot aspect. If you get a mug shot, that is pretty substantial identification. Is there currently in Nevada law anything that says, if I got arrested and released, can I expunge my mug shot?

Steve Yeager:

I believe you are accurate. I do not think there is any way to get that out of the system.

Chairman Frierson:

Are there any other questions from the Committee?

Assemblyman Carrillo:

I have a follow-up on expungement of photographs. That is our identifier. From the time we were kids taking school pictures, that is what identifies us as individuals. When we were getting into the expungement of DNA versus fingerprints and pictures, those are two different animals. Everybody has a picture but not everybody has a CODIS identification number. I see this as another avenue to prevent that DNA from getting into the wrong hands. We would like to think that everything is secure but the federal government gets hacked all the time. Who is to say that information is not going to be used against an innocent person?

Steve Yeager:

That is why the analogy of the house is a good one. Someone could have a picture of the outside of your house because that is exposed to the public. They can drive by and simply snap a picture. It is a much different scenario if the government is forcing you to give them the key to your house and they are saying they will maintain it, they will hold on to it, but not to worry because they are not going to go in there unless they need to. I think that draws some of the same kind of concerns. There are other ways to get the key to your house. You might drop it, you might have it under the mat, and someone might find it. It is a much different scenario to say "Give me that key because I want to have that access," and I think that is what we are talking about when it comes to a photograph or fingerprints versus someone's genetic makeup and profile. It is about the access to what is inside of you, not your exterior.

Chairman Frierson:

Are there any other questions from the Committee? [There were none.]

Chris Frey, Deputy Public Defender, Washoe County Public Defender's Office:

We are in opposition to the bill in its current form. However, I would note that with the incorporation of the amendments that have just been discussed, we would be neutral on the bill. Thank you.

Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada:

I will be brief. I did post a seven-page letter ([Exhibit L](#)) that highlights our concerns. I will comment on some of the testimony that has been provided. We do oppose the bill in its entirety for policy reasons. We believe that in America, people are innocent until they are proven guilty. The government does not have a right to subject you to searches prior to the time you are convicted of a crime. One of the reasons we are against the bill is because it invites error. What has happened in Nevada already is that two people have spent time incarcerated because of improper lab handling of results. There is also a liberty interest here. This is not part of the *Maryland v. King* arguments, but when there are mistakes, people lose their liberty, and without 100 percent guarantee that we can proceed without possible loss of liberty, I am unsure this is a good policy. I have not heard that we have safeguards in place; I have not heard that the different labs are going to have protocols that match up; I have not heard that the judicial system communicates with the crime labs in order to make sure all the evidence is clear. [Ms. Spinazola continued to read from ([Exhibit L](#)).] We encourage you to vote against S.B. 243 (R1). Thank you.

Assemblyman Ohrenschall:

If someone is seeking expungement and the charges were dismissed or denied, the decision whether the expungement will happen or not under this bill lies with the Central Repository, not with the judge. It is an administrative decision. If the request is denied and the requester feels that it is incorrect, what would be the next avenue to get that expunged?

Vanessa Spinazola:

That is exactly my question. My understanding is there is no next step based on my reading of the bill.

Assemblyman Ohrenschall:

If they had the resources, they could go to court or to the Central Repository, or is that unclear?

Vanessa Spinazola:

I am unsure of what the course of action would be.

Chairman Frierson:

I had hoped that Ms. Murga would be able to answer questions about the lab and issues that were raised earlier. She indicated support but if you could come up, because it has come up again, and answer some questions about both the backlog, if any, and a couple of the mistakes that were raised earlier.

Kimberly Murga:

The Las Vegas Metropolitan Police Department's DNA lab does currently have a backlog of casework samples for homicide, sex assaults, violent crimes, as well as property crimes. We are currently processing the violent offenses such as sexual assaults, homicides, robberies, and kidnappings dating back to approximately one year ago. We are currently processing property crimes that were submitted back in January 2012. We do serve a very large population and have relatively limited resources but as Mr. Gresko alluded to, database samples are processed completely separate and independently in laboratories and generally by completely different personnel. So casework is a separate process from convicted offender sample processing, and arrestees would fall in that same category.

Chairman Frierson:

Thank you. Are you familiar with the sample cases that were raised earlier by Mr. Carrillo?

Kimberly Murga:

I believe the two cases referenced were Dwayne Jackson and Lazaro Sotolusson. I do have knowledge about the occurrences associated with those cases.

Chairman Frierson:

Mr. Carrillo, would you restate your question?

Assemblyman Carrillo:

I have heard of the two mistakes. What improvements have the Las Vegas labs made since those mistakes? Have they implemented staff training or other protocols, and how can you guarantee that a mistake like that will not ever happen again?

Kimberly Murga:

The Dwayne Jackson sample switch occurred in 2001 and the Sotolusson incident occurred in 2002. The Dwayne Jackson case was discovered in 2010 and while the sample switch occurred nearly a decade prior, it was the use of CODIS that actually pointed to the error. During 2001 and 2002, that was before the Las Vegas Metropolitan Police Department had undergone and

received accreditation with the American Society of Crime Laboratory Directors. Through that accreditation process, the lab has adhered to and developed very stringent policies associated with every single step that occurs within the laboratory. In addition, the DNA laboratory is the only section that has to adhere to an additional set of very strict requirements that is set forth directly by the FBI. Those standards are called the quality assurance standards and are both for forensic DNA processing of cases as well as convicted offender and arrestee samples. The DNA laboratory is the only section in the laboratory that is audited on an annual basis. Once a year, it can be by an internal body and every other year has to be through an external body. As one of the Assemblymen alluded to earlier, it is like a peer review. Every five years, a formal body comes in to audit the laboratory. The strength and the quality improvements that have been conveyed within the DNA program have been immense. Thank you.

Chairman Frierson:

Thank you, Ms. Murga, for providing that clarification. Are there any other questions from the Committee?

Assemblyman Hansen:

You mentioned backlog which I assume is based on funding. This bill has substantial funding increases in it, if passed. Have you had an opportunity to review that to see if those are going to be adequate to help you deal with this backlog?

Kimberly Murga:

The funding that is associated with the bill would primarily be for the processing of arrestee samples, the database side of the house, if you will. Because we serve such a large population and as DNA has increased in sensitivity over the years, the casework side of the house has been modified from not just processing violent crimes but property crimes. That has really exploded on the scene and that is why we do have a backlog. I would like to point out that the database side of the house has a 60-day turnaround as far as when samples are entered into the laboratory from the various collections sites in southern Nevada and when they are entered into CODIS. That is currently 60 days and as long as we are able to increase our staff to adequately process the samples, we expect the increase to be on the database side of the house. We have already made provisions to incorporate automation in preparation for this bill, if it passes. It will be July 1, 2014 that we expect to begin processing samples. Thank you.

Assemblyman Hansen:

One of the concerns is that the current process is to basically go inside a bodily orifice to get the sample, putting the swab in your mouth. Are there external ways now to get a DNA sample to deal with this issue? Can you scrape skin?

Kimberly Murga:

The current method that the state of Nevada is using to expedite the processing of DNA samples collected from offenders and, potentially, arrestees, is using a collection device that is activated through saliva. The buccal swab collection methodology will stay. I believe the law states in some places that it does have to be a biological specimen versus an oral swab sample. An oral swab sample is not nearly as invasive while some states still have blood collection methodologies. We do feel that, as far as standardized DNA collection methods, a buccal swab is the most consistent form of collection. Thank you.

Chairman Frierson:

Thank you, Ms. Murga. I appreciate you coming back up for that limited purpose. Is there anyone else wishing to offer testimony in opposition both here in Carson City and in Las Vegas?

Janine Hansen, representing Nevada Families for Freedom:

We support the amendment which would require automatic expungement. We are concerned also about the five years that people's DNA is stored when they have not been charged with a crime. Also, what authority does the state of Nevada have to expunge DNA from CODIS? That may have been answered earlier but I was in another hearing.

I have some other issues and one is that 20 percent of people who are arrested are convicted. We continue to expand the scope of how we keep people's DNA. I am concerned about potential abuses by government. There is presumption, not of innocence, but of future guilt which I find disturbing. I think this is the bottom line of my concern about this issue, that we are innocent until proven guilty. I also want to make a statement here that we certainly have compassion for those families that have suffered grievously and I want to extend my compassion to them. We encourage you to consider the amendments proposed today and also consider the far-reaching policy. Thank you.

Assemblywoman Cohen:

You mentioned that only 20 percent of arrestees are convicted. Is that a Nevada statistic or a national statistic?

Janine Hansen:

I believe it is a national statistic.

Chairman Frierson:

Is there anyone else wishing to offer testimony in opposition?

Michael Ginsberg, representing Progressive Leadership Alliance of Nevada:

I have spent a dozen or more years as a laboratory manager and compliance officer for a number of research and clinical genetics laboratories. We have policy concerns as well as the more clinical concerns. We do oppose this bill. We urge this Committee to attempt to address the concerns that were raised earlier. Why take samples unless probable cause is established? Some of the reasons around that is the desire for the FBI to expand this database with the hopes of obtaining as many DNA samples as possible to find additional matches. Compounding these issues are the issues of racial disparities that will exist. We all are very familiar with the disparities that exist in arrest rates and the disparities that exist in the prosecution rates of people that are charged with crimes. That also is a very big concern for us. We feel this is the equivalency of a modern-day Jim Crow genetic law and it really makes for bad policy. You have heard the need to take DNA from nonviolent offenders and why not go further than that. There are a lot of things we could do, but should we do them is the question.

The other thing is that there is no provision in here for exoneration. With the arrestee DNA so far, there is no one that has been exonerated from the use of arrestee DNA, not one single person. We would urge this Committee to try to address these things. That is our position and we are opposed to the bill.

Chairman Frierson:

Thank you, Mr. Ginsberg. Are there any questions from the Committee? Seeing none, I invite those here in Carson City or in Las Vegas wishing to offer testimony in a neutral position. [There was no one.] I would like to invite Senator Smith back up for closing remarks.

Senator Smith:

I am happy that I got to stay for the whole hearing and I appreciate your attention. I have a strong record for human rights issues as my votes in this session demonstrate. I want to verify, after speaking with the lab manager here, that the statement that was made about having an independent oversight manager is not the case. The FBI is the entity that regulates these labs. It is my understanding that CODIS has never, ever had a breach. Also, taking DNA at birth or when you get your driver's license is not relevant to this discussion. We are talking about a particular law and a particular circumstance that creates

the ability to prevent crimes, solve crimes, and save lives. If we can get you further information as you are considering this legislation, we are happy to do so. I think Ms. Sepich did a great job of laying out the case and I think our lab managers are such great resources that I encourage you see them if you have further questions. Thank you for your time.

Chairman Frierson:

Thank you, Senator, and I want to thank the families that brought this issue to you for being willing to share their stories. It cannot be easy every session, both in this state and other states, to share that. Obviously, there is a determination to have this issue addressed.

Also, I am equally offended at the notion that we would entertain any bill that had the intention of a Jim Crow effect on our community. I said at the outset that we are not here to disparage people's positions, and I think that is inappropriate. If it is somebody's position that that might ultimately be the consequence, then they are certainly entitled to their opinion but to disparage the intention of folks that bring this and many other measures, I firmly believe, is inappropriate.

With that, I will close the hearing on S.B. 243 (R1). Before I move on, we have a bill that has been exempt that we need to introduce. I would be seeking a motion to introduce bill draft request (BDR) S-522.

BDR S-522—Ratifies certain technical corrections made to NRS and Statutes of Nevada. (Later introduced as [Assembly Bill 499](#).)

ASSEMBLYMAN OHRENSCHALL MOVED TO INTRODUCE
BDR S-522.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

[The following exhibits were submitted but not mentioned: ([Exhibit M](#)), ([Exhibit N](#)), ([Exhibit O](#)), ([Exhibit P](#)), ([Exhibit Q](#)), ([Exhibit R](#)), ([Exhibit S](#)), and ([Exhibit T](#)).]

I will briefly open up the agenda for public comments. Seeing none and seeing no other matters continued, today's Assembly Committee on Judiciary is now adjourned [at 11:18 a.m.].

RESPECTFULLY SUBMITTED:

Thelma Reindollar
Committee Secretary

APPROVED BY:

Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 9, 2013

Time of Meeting: 8:09 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 243 (R1)	C	Senator Debbie Smith, Washoe County Senatorial District No. 13	University of Virginia Study
S.B. 243 (R1)	D	Bridgette Zunino, Private Citizen, Reno, Nevada	Testimony
S.B. 243 (R1)	E	Jayann Sepich, Private Citizen, Carlsbad, New Mexico	Testimony
S.B. 243 (R1)	F	Jayann Sepich, Private Citizen, Carlsbad, New Mexico	PowerPoint
S.B. 243 (R1)	G	Jayann Sepich, Private Citizen, Carlsbad, New Mexico	Virginia DNA Database
S.B. 243 (R1)	H	Brett Kandt, Special Deputy Attorney General, Office of the Attorney General	Letter of Support
S.B. 243 (R1)	I	Brett Kandt, Special Deputy Attorney General, Office of the Attorney General	State v. King
S.B. 243 (R1)	J	Steve Yeager, Deputy Public Defender, Clark County Public Defender's Office	Explanation Letter
S.B. 243 (R1)	K	Steve Yeager, Deputy Public Defender, Clark County Public Defender's Office	Amendments
S.B. 243 (R1)	L	Vanessa Spinazola, Legislative and Advocacy Director, ACLU of Nevada	Opposition Testimony

S.B. 243 (R1)	M	Submitted but not mentioned	NACDL Testimony
S.B. 243 (R1)	N	Submitted but not mentioned	CRG Opposition
S.B. 243 (R1)	O	Submitted but not mentioned	DNA Privacy Brochure
S.B. 243 (R1)	P	Submitted but not mentioned	UVA Today Article
S.B. 243 (R1)	Q	Submitted but not mentioned	Bill Summary
S.B. 243 (R1)	R	Submitted but not mentioned	Arrestee DNA: Myth vs. Fact
S.B. 243 (R1)	S	Submitted but not mentioned	ACLU Crime Lab Problems
S.B. 243 (R1)	T	Submitted but not mentioned	Case Against DNA Database of Innocent Persons