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COLORADO'S DNA LAWS

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As science and technology continue to become more sophisticated, the analysis of deoxyribonucleic acid (DNA) is becoming increasingly important for solving crimes. DNA is collected from a crime scene when an individual leaves behind traces of matter that can be collected, such as blood or tissue. Scientists develop a DNA profile from the sample by identifying a series of markers which creates a pattern that is unlikely to occur in another individual.

DNA may be collected from a crime suspect by swabbing the inside of the suspect's cheek. In the early years of DNA collection, it was necessary for DNA to be collected via a blood sample, but as technology has improved, DNA now is collected by the less invasive cheek swab. This sample is also analyzed to provide a pattern of markers and, if these patterns match, it is likely that the individual who left the DNA at the crime scene is the same individual who provided the DNA by cheek swab. These patterns of DNA markers are not unique, but are sufficiently rare that when combined with other evidence, investigators can be fairly certain that the DNA match is correct.

In recent years, state legislatures have placed an emphasis on the importance of collecting DNA to solve crimes, and as a result, many states have passed laws collecting DNA from individuals who have been convicted of certain crimes or from individuals who have been arrested for a crime. DNA samples collected from convicted felons are entered into the national DNA database, called the Combined DNA Index System (CODIS) where they are searched

against DNA samples from unsolved crimes to determine if a match exists. As of 2008, the CODIS database had over 6.5 million offender DNA profiles which resulted in 66,000 matches nationwide.¹ This issue brief describes the legislative efforts, both in Colorado and across the country, to mandate that individuals convicted of or arrested for a felony submit a DNA sample for entry into the national DNA database.

DNA Laws for Convicted Offenders

Forty-seven states and the federal government have enacted laws requiring that all *convicted* felons provide a DNA sample for entry into the national DNA database. Only Idaho, Nebraska, and New Hampshire do not have this requirement. In Colorado, the legislature has enacted several laws since 2000 concerning the collection of DNA from convicted felons.

Senate Bill 00-121: In 2000, the General Assembly authorized the Department of Corrections (DOC) to collect a blood sample for the purposes of DNA testing from offenders convicted of certain crimes of violence and all sexual offenses.

House Bill 01-1130: In 2001, the General Assembly expanded DOC's authority to allow for obtaining a blood sample from all felons admitted to DOC after March 31, 2002.

¹"CODIS Combined DNA Index System." FBI.gov.

Senate Bill 02-019: During the 2002 legislative session, the bill allowed DOC to collect any biological substance sample from an offender rather than specifying that a blood sample must be obtained.

Senate Bill 06-150: Finally, during the 2006 legislative session, the General Assembly repealed the current statute concerning DNA collection from offenders and replaced it with a new law which specified that all offenders convicted of a felony must submit to DNA testing, including juveniles, regardless of whether they are tried as juveniles or adults, who are convicted of crimes that would be considered a felony if they were committed by an adult.

DNA Laws for Felony Arrestees

In recent years, state legislatures have begun to enact legislation mandating that individuals submit a DNA sample upon being arrested for certain crimes. Eighteen states have enacted laws requiring individuals arrested for some or all types of felonies to submit a DNA sample.² For example, California requires DNA testing of all felony arrestees, while in South Carolina the law is limited to individuals arrested for felonies that are punishable by five years or more in prison.

During the 2009 legislative session, the Colorado General Assembly followed the 18 other states that have passed legislation requiring felony arrestees to submit a DNA sample. Under the Colorado law, beginning October 1, 2010, an individual arrested for any felony must provide a DNA sample as a part of the booking process.³

Local law enforcement agencies are responsible for collecting the sample. If the Colorado Bureau of Investigation (CBI) already has a DNA sample for the individual, the local law enforcement agency is not required to obtain another sample.

The sample is sent to CBI for storage, analysis, and submission to the national DNA database (CODIS). The CBI, however, is to hold the DNA sample from a felony arrestee until CBI receives confirmation that the individual was charged with the felony. If CBI does not receive this confirmation within a year of receiving the DNA sample, the sample is to be destroyed and not submitted to the CODIS database.

The law also provides a mechanism for an individual to have the DNA sample expunged from the national database and destroyed by CBI if the charge is dismissed, results in an acquittal, or the individual is convicted of an offense other than a felony. In this situation, the individual must submit a written request for expungement to CBI.

Upon receiving the request, CBI must verify with the local district attorney that the contents of the request are factual and, if appropriate, destroy the DNA sample and remove it from the national database. Finally, CBI must notify the individual that the sample has been expunged or the reasons why it was not eligible for expungement.

It is estimated that it will cost approximately \$1.7 million in the first year to implement this bill with costs decreasing to under \$1 million in subsequent years.⁴ Costs are expected to continue to decrease as increasing numbers of DNA samples are collected and as resources shift from obtaining DNA samples at the time of conviction to obtaining the sample at the time of arrest.

To pay for the implementation of the legislation, the bill included a surcharge of \$2.50 on each conviction for all felonies, misdemeanors, misdemeanor traffic charges, and traffic infractions. Collection of the surcharge began on July 1, 2009.

²Legislative Council Staff analysis of research conducted by the National Conference of State Legislatures.

³Senate Bill 09-241.

⁴Senate Bill 09-241 Fiscal Note, Legislative Council, July 6, 2009.