

SB241_L.027

HOUSE COMMITTEE OF REFERENCE REPORT

 Chairman of Committee

 Date
Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

SB09-241 be amended as follows:

- 1 Amend reengrossed bill, page 2, line 25, strike "SEPTEMBER 1, 2009," and
 2 substitute "SEPTEMBER 30, 2010,".
- 3 Page 3, line 7, strike "SEPTEMBER 1, 2009," and substitute "SEPTEMBER
 4 30, 2010,";
- 5 line 8, strike "SEPTEMBER 1, 2009," and substitute "SEPTEMBER 30,
 6 2010,";
- 7 line 13, strike "SEPTEMBER 1, 2009," and substitute "SEPTEMBER 30,
 8 2010,".
- 9 Page 4, strike lines 19 through 24.
- 10 Page 5, strike lines 11 through 27 and substitute the following:
- 11 **"16-23-105. Expungement.** (1) EXCEPT AS PROVIDED IN
 12 SUBSECTION (7) OF THIS SECTION, A PERSON WHOSE BIOLOGICAL
 13 SUBSTANCE SAMPLE IS COLLECTED PURSUANT TO SECTION 16-23-103
 14 QUALIFIES FOR EXPUNGEMENT IF:
- 15 (a) IN THE CASE OF A SAMPLE COLLECTED BASED UPON THE FILING
 16 OF A CHARGE OR BASED UPON A FINAL COURT ORDER, EACH FELONY
 17 CHARGE STEMMING FROM THE CHARGES HAS, BY FINAL COURT ORDER,
 18 BEEN DISMISSED, RESULTED IN AN ACQUITTAL, OR RESULTED IN A
 19 CONVICTION FOR AN OFFENSE OTHER THAN A FELONY OFFENSE;



1 (b) IN THE CASE OF A SAMPLE COLLECTED BASED UPON AN ARREST:

2 (I) A FELONY CHARGE WAS NOT FILED WITHIN NINETY DAYS OF THE
3 ARREST; OR

4 (II) EACH FELONY CHARGE STEMMING FROM THE ARREST HAS, BY
5 FINAL COURT ORDER, BEEN DISMISSED, RESULTED IN AN ACQUITTAL, OR
6 RESULTED IN A CONVICTION FOR AN OFFENSE OTHER THAN A FELONY
7 OFFENSE.

8 (2) A PERSON WHO QUALIFIES FOR EXPUNGEMENT UNDER
9 SUBSECTION (1) OF THIS SECTION MAY SUBMIT A WRITTEN REQUEST FOR
10 EXPUNGEMENT TO THE COLORADO BUREAU OF INVESTIGATION. THE
11 REQUEST SHALL INCLUDE THE ITEMS LISTED IN THIS SUBSECTION (2) AND
12 MAY INCLUDE ANY ADDITIONAL INFORMATION THAT MAY ASSIST THE
13 BUREAU IN LOCATING THE RECORDS OF ARREST OR CHARGES OR THE
14 BIOLOGICAL SUBSTANCE SAMPLE OR TESTING RESULTS. THE FOLLOWING
15 INFORMATION SHALL BE INCLUDED IN THE SUBMITTED REQUEST:

16 (a) THE PERSON'S NAME, DATE OF BIRTH, AND MAILING ADDRESS;

17 (b) THE NAME OF THE AGENCY THAT COLLECTED THE BIOLOGICAL
18 SUBSTANCE SAMPLE;

19 (c) THE DATE OF ARREST OR OTHER DATE WHEN THE SAMPLE WAS
20 TAKEN;

21 (d) WHETHER ANY CHARGES WERE FILED STEMMING FROM THE
22 ARREST FOR WHICH A BIOLOGICAL SUBSTANCE SAMPLE WAS COLLECTED,
23 THE IDENTITY OF THE COURT, AND THE CASE NUMBER OF EACH CASE IN
24 WHICH CHARGES WERE FILED; AND

25 (e) A DECLARATION THAT, TO THE BEST OF THE PERSON'S
26 KNOWLEDGE, HE OR SHE QUALIFIES FOR EXPUNGEMENT.

27 (3) UPON RECEIPT OF A REQUEST SATISFYING THE REQUIREMENTS
28 OF SUBSECTION (2) OF THIS SECTION, THE COLORADO BUREAU OF
29 INVESTIGATION SHALL PROMPTLY SUBMIT A WRITTEN INQUIRY TO THE
30 DISTRICT ATTORNEY IN THE JURISDICTION IN WHICH THE PERSON'S
31 BIOLOGICAL SUBSTANCE SAMPLE WAS COLLECTED CONCERNING THE



1 OUTCOME OF THE ARREST OR CHARGES.

2 (4) WITHIN NINETY DAYS AFTER RECEIVING THE REQUEST
3 SUBMITTED PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE
4 COLORADO BUREAU OF INVESTIGATION SHALL DESTROY THE BIOLOGICAL
5 SUBSTANCE SAMPLE COLLECTED PURSUANT TO SECTION 16-23-103 AND
6 EXPUNGE THE RESULTS OF THE TESTING OF THE SAMPLE FROM THE
7 FEDERAL COMBINED DNA INDEX SYSTEM AND ANY STATE INDEX SYSTEM,
8 UNLESS THE BUREAU RECEIVES WRITTEN NOTIFICATION FROM THE
9 APPLICABLE DISTRICT ATTORNEY THAT THE PERSON DOES NOT QUALIFY
10 FOR EXPUNGEMENT AND THE REASONS THE PERSON DOES NOT QUALIFY.

11 (5) WITHIN THIRTY DAYS AFTER RECEIVING A NOTICE FROM A
12 DISTRICT ATTORNEY PURSUANT TO SUBSECTION (4) OF THIS SECTION, OR
13 AT THE END OF THE NINETY-DAY PERIOD IDENTIFIED IN SUBSECTION (4) OF
14 THIS SECTION, WHICHEVER IS EARLIER, THE COLORADO BUREAU OF
15 INVESTIGATION SHALL SEND NOTIFICATION BY FIRST CLASS MAIL TO THE
16 PERSON ARRESTED OR CHARGED, EITHER STATING THAT THE BUREAU HAS
17 DESTROYED THE BIOLOGICAL SUBSTANCE SAMPLE AND EXPUNGED THE
18 RESULTS OF THE TESTING OF THE SAMPLE OR STATING WHY THE BUREAU
19 HAS NOT DESTROYED THE SAMPLE AND EXPUNGED THE TEST RESULTS.

20 (6) A DATA BANK OR DATABASE MATCH SHALL NOT BE ADMITTED
21 AS EVIDENCE AGAINST A PERSON IN A CRIMINAL PROSECUTION AND SHALL
22 NOT BE USED AS A BASIS TO IDENTIFY A PERSON IF THE MATCH IS:

23 (a) DERIVED FROM A BIOLOGICAL SUBSTANCE SAMPLE THAT IS
24 REQUIRED TO BE DESTROYED OR EXPUNGED PURSUANT TO THIS SECTION;
25 AND

26 (b) OBTAINED AFTER THE REQUIRED DATE OF DESTRUCTION OR
27 EXPUNGEMENT.

28 (7) THIS SECTION SHALL NOT APPLY IF THE PERSON HAS BEEN
29 ARRESTED FOR, CHARGED WITH, OR CONVICTED OF SOME OTHER OFFENSE
30 ON THE BASIS OF WHICH A BIOLOGICAL SUBSTANCE SAMPLE WAS OR COULD
31 HAVE BEEN COLLECTED UNDER STATE STATUTE.

32 (8) FOR PURPOSES OF THIS SECTION, A COURT ORDER SHALL NOT BE
33 DEEMED FINAL IF TIME REMAINS FOR AN APPEAL OR APPLICATION FOR
34 DISCRETIONARY REVIEW WITH RESPECT TO THE ORDER."



1 Strike page 6.

2 Page 7, strike lines 1 through 24.

3 Page 11, line 11, strike "THROUGH" and substitute "TO".

4 Page 15, line 23, strike "to THROUGH" and substitute "to".

5 Page 16, after line 27, insert the following:

6 "SECTION 10. 18-1-412, Colorado Revised Statutes, is amended
7 BY THE ADDITION OF A NEW SUBSECTION to read:

8 **18-1-412. Procedure for application for DNA testing -**
9 **appointment of counsel.** (9) UPON MOTION OF THE DEFENDANT OR HIS
10 OR HER COUNSEL, THE COURT SHALL ORDER A DATABASE SEARCH BY A
11 LAW ENFORCEMENT AGENCY IF THE COURT DETERMINES THAT A
12 REASONABLE PROBABILITY EXISTS THAT THE DATABASE SEARCH WILL
13 PRODUCE EXCULPATORY OR MITIGATING EVIDENCE RELEVANT TO A CLAIM
14 OF WRONGFUL CONVICTION OR SENTENCING. DNA PROFILES MUST MEET
15 CURRENT NATIONAL DNA DATABASE INDEX SYSTEM ELIGIBILITY
16 STANDARDS AND CONFORM TO CURRENT FEDERAL BUREAU OF
17 INVESTIGATION QUALITY ASSURANCE STANDARDS IN ORDER TO BE
18 ELIGIBLE FOR SEARCH AGAINST THE STATE INDEX SYSTEM."

19 Renumber succeeding sections accordingly.

20 Page 17, line 9, strike "12" and substitute "13".

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