

CLSB241.001

FIRST REPORT OF FIRST CONFERENCE COMMITTEE
ON SB09-241

THIS REPORT AMENDS THE
REENGROSSED BILL

To the President of the Senate and the
Speaker of the House of Representatives:

Your first conference committee appointed on SB09-241,
concerning DNA testing of adults arrested for a felony, and making an
appropriation therefor, has met and reports that it has agreed upon the
following:

1. That the House recede from its amendments made to the bill,
as the amendments appear in the rerevised bill, and that the following
amendments be substituted therefor:

Amend the reengrossed bill, page 2, line 25, strike "SEPTEMBER 1, 2009,"
and substitute "SEPTEMBER 30, 2010,".

Page 3, line 7, strike "SEPTEMBER 1, 2009," and substitute "SEPTEMBER
30, 2010,";

line 8, strike "SEPTEMBER 1, 2009," and substitute "SEPTEMBER 30,
2010,";

line 13, strike "SEPTEMBER 1, 2009," and substitute "SEPTEMBER 30,
2010,".

Page 4, strike lines 19 through 24.

Page 5, strike lines 11 through 27 and substitute the following:

"16-23-105. Expungement. (1) EXCEPT AS PROVIDED IN
SUBSECTION (7) OF THIS SECTION, A PERSON WHOSE BIOLOGICAL

SUBSTANCE SAMPLE IS COLLECTED PURSUANT TO SECTION 16-23-103 QUALIFIES FOR EXPUNGEMENT IF:

(a) IN THE CASE OF A SAMPLE COLLECTED BASED UPON THE FILING OF A CHARGE OR BASED UPON A FINAL COURT ORDER, EACH FELONY CHARGE DESCRIBED IN TITLE 18, C.R.S., STEMMING FROM THE CHARGES HAS, BY FINAL COURT ORDER, BEEN DISMISSED, RESULTED IN AN ACQUITTAL, OR RESULTED IN A CONVICTION FOR AN OFFENSE OTHER THAN A FELONY OFFENSE DESCRIBED IN TITLE 18, C.R.S.;

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

(I) A FELONY CHARGE DESCRIBED IN TITLE 18, C.R.S., WAS NOT FILED WITHIN NINETY DAYS OF THE ARREST; OR

(II) EACH FELONY CHARGE DESCRIBED IN TITLE 18, C.R.S., STEMMING FROM THE ARREST HAS, BY FINAL COURT ORDER, BEEN DISMISSED, RESULTED IN AN ACQUITTAL, OR RESULTED IN A CONVICTION FOR AN OFFENSE OTHER THAN A FELONY OFFENSE.

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

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

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

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

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

WHICH CHARGES WERE FILED; AND

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

(3) UPON RECEIPT OF A REQUEST SATISFYING THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION, THE COLORADO BUREAU OF INVESTIGATION SHALL PROMPTLY SUBMIT A WRITTEN INQUIRY TO THE DISTRICT ATTORNEY IN THE JURISDICTION IN WHICH THE PERSON'S BIOLOGICAL SUBSTANCE SAMPLE WAS COLLECTED CONCERNING THE OUTCOME OF THE ARREST OR CHARGES.

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

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

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

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

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

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

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

Strike page 6.

Page 7, strike lines 1 through 24.

Page 9, line 8, strike "FIVE DOLLARS" and substitute "TWO DOLLARS AND FIFTY CENTS";

line 19, strike "FIVE DOLLARS" and substitute "TWO DOLLARS AND FIFTY CENTS";

line 27, strike "FIVE DOLLARS" and substitute "TWO DOLLARS AND FIFTY CENTS".

Page 10, line 7, strike "FIVE DOLLARS" and substitute "TWO DOLLARS AND FIFTY CENTS";

line 15, strike "FIVE DOLLARS" and substitute "TWO DOLLARS AND FIFTY CENTS";

line 23, strike "FIVE DOLLARS" and substitute "TWO DOLLARS AND FIFTY CENTS".

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

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

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

2. That, under the authority granted the committee to consider matters not at issue between the two houses, the following amendments be recommended:

Page 3, strike line 1 and substitute the following:

"FOR A FELONY OFFENSE DESCRIBED IN TITLE 18, C.R.S., OR FOR THE INVESTIGATION OF A FELONY OFFENSE DESCRIBED IN TITLE 18, C.R.S.";

line 6, after "COMPLAINT", insert "DESCRIBED IN TITLE 18, C.R.S.,";

line 8, after "CHARGE", insert "DESCRIBED IN TITLE 18, C.R.S.,".

Page 16, after line 27, insert the following:

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

18-1-412. Procedure for application for DNA testing - appointment of counsel. (9) UPON MOTION OF THE DEFENDANT OR HIS OR HER COUNSEL, THE COURT SHALL ORDER A DATABASE SEARCH BY A LAW ENFORCEMENT AGENCY IF THE COURT DETERMINES THAT A REASONABLE PROBABILITY EXISTS THAT THE DATABASE SEARCH WILL PRODUCE EXCULPATORY OR MITIGATING EVIDENCE RELEVANT TO A CLAIM OF WRONGFUL CONVICTION OR SENTENCING. DNA PROFILES MUST MEET CURRENT NATIONAL DNA DATABASE INDEX SYSTEM ELIGIBILITY

STANDARDS AND CONFORM TO CURRENT FEDERAL BUREAU OF INVESTIGATION QUALITY ASSURANCE STANDARDS IN ORDER TO BE ELIGIBLE FOR SEARCH AGAINST THE STATE INDEX SYSTEM."

Renumber succeeding sections accordingly.

Respectfully submitted,

Senate Committee:

House Committee: