

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 13-0054.01 Michael Dohr x4347

HOUSE BILL 13-1251

HOUSE SPONSORSHIP

Pabon, Foote

SENATE SPONSORSHIP

Morse,

House Committees

Judiciary
Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING COLLECTION OF A DNA SAMPLE FROM OFFENDERS**
102 **CONVICTED OF A CLASS 1 MISDEMEANOR IN THE COLORADO**
103 **CRIMINAL CODE, AND, IN CONNECTION THEREWITH, MAKING AN**
104 **APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Under current law, only an offender convicted of a misdemeanor involving unlawful sexual conduct must provide a DNA sample for

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

inclusion in the DNA database at the Colorado Bureau of Investigation. The bill would require collection of a DNA sample from all persons convicted of a class 1, 2, or 3 misdemeanor.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 16-11-102.4, **amend**
3 (1) (g); and **add** (7) as follows:

4 **16-11-102.4. Genetic testing of convicted offenders.**

5 (1) Beginning July 1, 2007, each of the following convicted offenders
6 shall submit to and pay for collection and a chemical testing of the
7 offender's biological substance sample to determine the genetic markers
8 thereof, unless the offender has already provided a biological substance
9 sample for such testing pursuant to a statute of this state:

10 (g) Every offender sentenced on or after July 1, 2007, for a felony
11 conviction OR SENTENCED ON OR AFTER JULY 1, 2013, FOR A CLASS 1
12 MISDEMEANOR CONVICTION FOR A CRIME IN TITLE 18, C.R.S.; except
13 that this paragraph (g) shall not apply to an offender granted a deferred
14 judgment and sentencing as authorized in section 18-1.3-102, C.R.S.,
15 unless otherwise required to submit to a sample pursuant to this section,
16 or unless the deferred judgment and sentencing is revoked and a sentence
17 is imposed. The sample shall be collected:

18 (I) From an offender sentenced to the department of corrections,
19 by the department during the intake process but in any event within
20 thirty-five days after the offender is received by the department;

21 (II) From an offender sentenced to county jail or community
22 corrections, by the sheriff or by the community corrections program
23 within thirty-five days after the offender is received into the custody of
24 the county jail or the community corrections facility;

1 (III) From an offender sentenced to probation, by the judicial
2 department OR PROBATION DEPARTMENT within thirty-five days after the
3 offender is placed on probation;

4 (IV) From an offender sentenced to the youthful offender system,
5 by the department of corrections within thirty-five days after the offender
6 is received at the youthful offender system; and

7 (V) From an offender who receives any other sentence or who
8 receives a suspended sentence, by the judicial department OR PROBATION
9 DEPARTMENT within thirty-five days after the offender is sentenced or the
10 sentence is suspended.

11 (7) (a) IF AN OFFENDER'S MISDEMEANOR CONVICTION IS
12 OVERTURNED ON POST-CONVICTION RELIEF OR APPEAL, THE OFFENDER
13 MAY SUBMIT A WRITTEN REQUEST FOR EXPUNGEMENT TO THE COLORADO
14 BUREAU OF INVESTIGATION. THE REQUEST SHALL INCLUDE THE ITEMS
15 LISTED IN THIS PARAGRAPH (a) AND ANY ADDITIONAL INFORMATION THAT
16 MAY ASSIST THE BUREAU IN LOCATING THE RECORDS OF CONVICTION OR
17 THE BIOLOGICAL SUBSTANCE SAMPLE OR TESTING RESULTS. THE
18 FOLLOWING INFORMATION MUST BE INCLUDED IN THE REQUEST:

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

20 (II) THE NAME OF THE AGENCY THAT COLLECTED THE BIOLOGICAL
21 SUBSTANCE SAMPLE;

22 (III) THE DATE WHEN THE SAMPLE WAS TAKEN;

23 (IV) A COPY OF THE POST-CONVICTION OR APPELLATE ORDER
24 OVERTURNING THE CONVICTION; AND

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

27 (b) WITHIN NINETY DAYS AFTER RECEIVING THE REQUEST

1 SUBMITTED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION, THE
2 COLORADO BUREAU OF INVESTIGATION SHALL DESTROY THE BIOLOGICAL
3 SUBSTANCE SAMPLE COLLECTED AND EXPUNGE THE RESULTS OF THE
4 TESTING OF THE SAMPLE FROM THE FEDERAL COMBINED DNA INDEX
5 SYSTEM AND ANY STATE INDEX SYSTEM.

6 (c) THE COLORADO BUREAU OF INVESTIGATION SHALL SEND
7 NOTIFICATION BY FIRST CLASS MAIL TO THE OFFENDER, EITHER STATING
8 THAT THE BUREAU DESTROYED THE BIOLOGICAL SUBSTANCE SAMPLE AND
9 EXPUNGED THE SAMPLE TEST RESULTS OR STATING WHY THE BUREAU HAS
10 NOT DESTROYED THE SAMPLE AND EXPUNGED THE TEST RESULTS.

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

14 (I) DERIVED FROM A BIOLOGICAL SUBSTANCE SAMPLE THAT IS
15 REQUIRED TO BE EXPUNGED PURSUANT TO THIS SECTION; AND

16 (II) OBTAINED AFTER THE REQUIRED DATE OF EXPUNGEMENT.

17 **SECTION 2. Appropriation.** (1) In addition to any other
18 appropriation, there is hereby appropriated, out of any moneys in the
19 general fund not otherwise appropriated, to the judicial department, for
20 the fiscal year beginning July 1, 2013, the sum of \$91,589 and 0.9 FTE,
21 or so much thereof as may be necessary, to be allocated for the
22 implementation of this act as follows:

23 (a) \$54,048 and 0.9 FTE to probation programs for personal
24 services;

25 (b) \$32,838 to probation programs for operating expenses; and

26 (c) \$4,703 to centrally administered programs for courthouse
27 capital/infrastructure maintenance.

1 (2) In addition to any other appropriation, there is hereby
2 appropriated to the department of public safety, for the fiscal year
3 beginning July 1, 2013, the sum of \$494,178 and 1.4 FTE, or so much
4 thereof as may be necessary, for the implementation of this act as follows:

5 (a) \$67,639 and 1.4 FTE from the general fund, for allocation to
6 the Colorado bureau of investigation, laboratory and investigative
7 services, for personal services;

8 (b) \$10,831 from the general fund, for allocation to the Colorado
9 bureau of investigation, laboratory and investigative services, for
10 operating expenses;

11 (c) \$144,489 from the general fund, for allocation to the Colorado
12 bureau of investigation, laboratory and investigative services, for
13 operating expenses for the processing of DNA samples;

14 (d) \$91,219 from the offender identification fund created in
15 section 24-33.5-415.6 (1), Colorado Revised Statutes, for allocation to the
16 Colorado bureau of investigation, laboratory and investigative services,
17 for operating expenses for the processing of DNA samples; and

18 (e) \$180,000 from the offender identification fund created in
19 section 24-33.5-415.6 (1), Colorado Revised Statutes, for allocation to the
20 Colorado bureau of investigation, laboratory and investigative services,
21 for operating expenses for the purchase of DNA analysis equipment.

22 **SECTION 3. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, and safety.