

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 06-0757.01 Michael Dohr

HOUSE BILL 06-1292

HOUSE SPONSORSHIP

Stengel,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING IDENTITY TESTING OF OFFENDERS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Expands DNA testing requirements to all adults convicted of a felony who are in custody or who are on parole or probation. Extends DNA testing requirements to all juveniles who are adjudicated for an offense that would constitute a felony if committed by an adult and, as a result, are committed to the department of human services or placed on probation. Requires the Colorado bureau of investigation to store the biological substance to be tested until sufficient appropriations are made for chemical testing.

Permits a felon in the custody of the department of corrections to

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.

request an electronic brain wave response test to prove the felon's innocence, which test is subject to available appropriations. Creates the brain fingerprinting pilot program cash fund to pay for the electronic brain wave response test. Authorizes the fund to accept gifts, grants, and donations.

Makes conforming amendments.

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

2 **SECTION 1.** 16-11-102.3, Colorado Revised Statutes, is
3 amended to read:

4 **16-11-102.3. Genetic testing of convicted offenders.** (1) ~~As~~
5 ~~used in this section, unless the context otherwise requires, "convicted~~
6 ~~offender" means a person who is not required to submit to a chemical~~
7 ~~testing of the person's biological substance sample to determine the~~
8 ~~genetic markers thereof pursuant to any other provision and who is~~
9 ~~convicted of, or pleads guilty to any of the following offenses:~~

10 (a) ~~An offense involving, or for which the factual basis involved,~~
11 ~~unlawful sexual behavior as defined in section 16-22-102 (9);~~

12 (b) ~~A crime of violence, as listed in section 18-1.3-406 (2);~~
13 ~~C.R.S.;~~

14 (c) ~~Second degree murder, in violation of section 18-3-103 (1);~~
15 ~~C.R.S.;~~

16 (d) ~~First degree assault, in violation of section 18-3-202 (1);~~
17 ~~C.R.S.;~~

18 (e) ~~Second degree assault, in violation of section 18-3-203 (1) (b);~~
19 ~~(1) (c), (1) (d), (1) (g), or (2) (b.5), C.R.S.;~~

20 (f) ~~Second degree kidnapping, in violation of section 18-3-302~~
21 ~~(4), C.R.S.;~~

22 (g) ~~First degree arson, in violation of section 18-4-102 (3), C.R.S.;~~

1 ~~(h) Burglary in the first degree, in violation of section 18-4-202,~~
2 ~~C.R.S.;~~

3 ~~(i) Aggravated robbery, in violation of section 18-4-302 (4),~~
4 ~~C.R.S.; or~~

5 ~~(j) Any felony when the person was previously convicted of, or~~
6 ~~pled guilty to one or more of the offenses listed in paragraphs (a) to (i) of~~
7 ~~this subsection (1).~~

8 ~~(1.5) Subject to available appropriations, beginning March 31,~~
9 ~~2002, every felon who is sentenced to the custody of the executive~~
10 ~~director of the department of corrections shall submit to and pay for~~
11 ~~collection and a chemical testing of a biological substance sample from~~
12 ~~the offender to determine the genetic markers thereof prior to the person's~~
13 ~~discharge or release to parole.~~

14 ~~(2) (a) (Deleted by amendment, L. 2001, p. 953, 1, effective~~
15 ~~March 31, 2002.)~~

16 ~~(b) Every convicted offender who, as of July 1, 2000, is in a~~
17 ~~county jail or a community corrections facility pursuant to article 27 of~~
18 ~~title 17, C.R.S., for an offense described in subsection (1) of this section~~
19 ~~shall submit to and pay for collection and a chemical testing of a~~
20 ~~biological substance sample from the offender to determine the genetic~~
21 ~~markers thereof.~~

22 ~~(c) (Deleted by amendment, L. 2001, p. 953, 1, effective March~~
23 ~~31, 2002.)~~

24 ~~(d) Every convicted offender who, as of July 1, 2000, is on~~
25 ~~probation for an offense described in subsection (1) of this section shall~~
26 ~~submit to and pay for collection and a chemical testing of a biological~~
27 ~~substance sample from the offender to determine the genetic markers~~

1 thereof.

2 (3) ~~Collection of the biological substance samples required by~~
3 ~~subsection (1.5) of this section and paragraph (b) of subsection (2) of this~~
4 ~~section shall be collected at least thirty days prior to the person's~~
5 ~~discharge or release from custody. Collection of the biological substance~~
6 ~~samples required by paragraph (d) of subsection (2) of this section shall~~
7 ~~be collected prior to June 30, 2001.~~

8 (3.5) (a) EVERY OFFENDER WHO IS IN THE CUSTODY OF THE
9 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS, IN A
10 COMMUNITY CORRECTIONS FACILITY PURSUANT TO ARTICLE 27 OF TITLE
11 17, C.R.S., OR ON PROBATION AS A RESULT OF A CONVICTION OF OR A PLEA
12 TO A FELONY SHALL, PRIOR TO THE OFFENDER'S DISCHARGE OR RELEASE TO
13 PAROLE, SUBMIT TO AND PAY FOR COLLECTION AND CHEMICAL TESTING OF
14 A BIOLOGICAL SUBSTANCE SAMPLE FROM THE OFFENDER TO DETERMINE
15 THE GENETIC MARKERS THEREOF PRIOR TO RELEASE.

16 (b) EVERY OFFENDER WHO IS IN A COUNTY JAIL, IN A COMMUNITY
17 CORRECTIONS FACILITY PURSUANT TO ARTICLE 27 OF TITLE 17, C.R.S., OR
18 ON PROBATION AS A RESULT OF A CONVICTION OF OR A PLEA TO AN
19 OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR, AS DEFINED IN
20 SECTION 16-22-102 (9), OR AN OFFENSE THE UNDERLYING FACTUAL BASIS
21 OF WHICH INVOLVES UNLAWFUL SEXUAL BEHAVIOR, SHALL, PRIOR TO THE
22 OFFENDER'S RELEASE FROM CUSTODY, SUBMIT TO AND PAY FOR
23 COLLECTION AND CHEMICAL TESTING OF A BIOLOGICAL SUBSTANCE
24 SAMPLE FROM THE OFFENDER TO DETERMINE THE GENETIC MARKERS
25 THEREOF.

26 (3.7) THE BIOLOGICAL SUBSTANCE SAMPLES REQUIRED BY
27 SUBSECTION (3.5) OF THIS SECTION SHALL BE COLLECTED AT LEAST THIRTY

1 DAYS PRIOR TO THE OFFENDER'S DISCHARGE OR RELEASE FROM CUSTODY.

2 (4) The judicial department, the department of corrections, a
3 sheriff, or a contractor may use reasonable force to obtain biological
4 substance samples in accordance with this section using medically
5 recognized procedures. In addition, a person's refusal to comply with this
6 section may be grounds for revocation or denial of parole or probation.

7 (5) Any moneys received from offenders pursuant to this section
8 shall be deposited in the offender identification fund created in section
9 24-33.5-415.6, C.R.S.

10 (6) (a) The Colorado bureau of investigation is directed to conduct
11 the chemical testing of the biological substance samples obtained
12 pursuant to this section. The results thereof shall be filed and maintained
13 by the Colorado bureau of investigation and shall be furnished to any law
14 enforcement agency upon request.

15 (b) THE COLORADO BUREAU OF INVESTIGATION SHALL ESTABLISH
16 A SCHEDULE FOR CHEMICAL TESTING TO TEST AS MANY SAMPLES AS
17 POSSIBLE WITHIN EXISTING APPROPRIATIONS. THE SCHEDULE MAY SHOW
18 A SIGNIFICANT NUMBER OF UNTESTED BIOLOGICAL SUBSTANCE SAMPLES.
19 THE JOINT BUDGET COMMITTEE, OR ANY SUCCESSOR COMMITTEE, SHALL
20 ANNUALLY REVIEW THE APPROPRIATION TO THE COLORADO BUREAU OF
21 INVESTIGATION WITHIN THE DEPARTMENT OF PUBLIC SAFETY FOR
22 CHEMICAL GENETIC TESTING TO DETERMINE WHETHER AN INCREASED
23 APPROPRIATION IS NECESSARY.

24 (c) THE COLORADO BUREAU OF INVESTIGATION SHALL STORE AND
25 PRESERVE ALL BIOLOGICAL SUBSTANCE SAMPLES UNTIL CHEMICAL
26 TESTING IS PERFORMED.

27 **SECTION 2.** Part 1 of article 11 of title 16, Colorado Revised

1 Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION
2 to read:

3 **16-11-102.4. Brain fingerprinting pilot program - cash fund.**

4 (1) AN OFFENDER WHO IS IN THE CUSTODY OF THE DEPARTMENT OF
5 CORRECTIONS AS A RESULT OF A CONVICTION OF OR A PLEA TO A FELONY
6 OFFENSE MAY REQUEST ADMINISTRATION OF AN ELECTRONIC BRAIN WAVE
7 RESPONSE TEST TO SHOW THAT THE OFFENDER IS INNOCENT OF THE
8 OFFENSE, WHICH TEST IS SUBJECT TO AVAILABLE APPROPRIATIONS.

9 (2) THERE IS HEREBY CREATED IN THE STATE TREASURY THE BRAIN
10 FINGERPRINTING PILOT PROGRAM FUND, REFERRED TO IN THIS SUBSECTION

11 (2) AS THE "FUND", THAT SHALL CONSIST OF ANY GIFTS, GRANTS, AND
12 DONATIONS RECEIVED BY THE DEPARTMENT OF CORRECTIONS AND ANY
13 MONEYS THAT MAY BE APPROPRIATED TO THE FUND BY THE GENERAL
14 ASSEMBLY. THE MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL
15 APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE DIRECT AND
16 INDIRECT COSTS ASSOCIATED WITH THE IMPLEMENTATION OF THE BRAIN
17 FINGERPRINTING PILOT PROGRAM. THE DEPARTMENT OF CORRECTIONS IS
18 AUTHORIZED TO SEEK AND ACCEPT GIFTS, GRANTS, AND DONATIONS FROM
19 PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF THIS SECTION. ALL
20 PRIVATE AND PUBLIC FUNDS RECEIVED THROUGH GIFTS, GRANTS, AND
21 DONATIONS SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO
22 SHALL CREDIT THE SAME TO THE FUND. ANY MONEYS IN THE FUND NOT
23 EXPENDED FOR THE PURPOSE OF THIS SECTION MAY BE INVESTED BY THE
24 STATE TREASURER AS PROVIDED BY LAW. ALL INTEREST AND INCOME
25 DERIVED FROM THE INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND
26 SHALL BE CREDITED TO THE FUND. ANY UNEXPENDED AND
27 UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF A

1 FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR
2 TRANSFERRED TO THE GENERAL FUND OR ANOTHER FUND.

3 **SECTION 3. Repeal.** 16-11-104, 16-11-204.3, and 17-22.5-407,
4 Colorado Revised Statutes, are repealed.

5 **SECTION 4. Repeal.** 16-11-308 (4.5), Colorado Revised
6 Statutes, is repealed as follows:

7 **16-11-308. Custody of department of corrections - procedure.**

8 ~~(4.5) (a) While confined in the diagnostic center, each of the following~~
9 ~~offenders shall submit to a chemical testing of a biological substance~~
10 ~~sample from the offender to determine the genetic markers:~~

11 ~~(I) Any offender sentenced on or after July 1, 2000, as a habitual~~
12 ~~offender pursuant to the provisions of section 18-1.3-801, C.R.S.; and~~

13 ~~(II) Any offender convicted of one or more of the following~~
14 ~~offenses committed on or after July 1, 2000:~~

15 ~~(A) Second degree burglary as described in section 18-4-203,~~
16 ~~C.R.S.; or~~

17 ~~(B) Third degree burglary as described in section 18-4-204, C.R.S.~~

18 ~~(b) The results of the testing conducted pursuant to paragraph (a)~~
19 ~~of this subsection (4.5) shall be filed and maintained by the Colorado~~
20 ~~bureau of investigation. The results of such test shall be furnished to any~~
21 ~~law enforcement agency upon request.~~

22 **SECTION 5. Repeal.** 17-2-201 (5) (h), Colorado Revised
23 Statutes, is repealed as follows:

24 **17-2-201. State board of parole.** (5) (h) ~~(I) As a condition of~~
25 ~~parole, the board may require any person found guilty of or who pleads~~
26 ~~guilty or nolo contendere to a sexual offense under the department's code~~
27 ~~of penal discipline to submit to a testing of a biological substance sample~~

1 from the person to determine the genetic markers thereof.

2 (H) If such testing is required, it shall occur prior to the offender's
3 release from incarceration, and the results thereof shall be filed with and
4 maintained by the Colorado bureau of investigation. The results of such
5 test shall be furnished to any law enforcement agency upon request.

6 (HH) The provisions of this paragraph (h) shall apply to any person
7 who is so adjudicated for an act committed on or after July 1, 1999.

8 **SECTION 6. Repeal.** 17-22.5-202 (3) (b.5) (II) and (3.5),
9 Colorado Revised Statutes, are repealed as follows:

10 **17-22.5-202. Ticket to leave - discharge - clothes, money,**
11 **transportation.** (3) Prior to the release from a correctional facility by
12 discharge or parole of any person imprisoned for the commission of a
13 child abuse offense which occurred within the state of Colorado, the
14 executive director shall:

15 (b.5) (II) In addition, the department shall require any offender
16 convicted of or who pleads guilty or nolo contendere to an offense
17 involving unlawful sexual behavior or for which the factual basis
18 involved unlawful sexual behavior as defined in section 16-22-102 (9),
19 C.R.S., to submit to chemical testing of a biological substance sample
20 from the offender to determine the genetic markers thereof. Such testing
21 shall occur prior to the offender's release from incarceration, and the
22 results thereof shall be filed with and maintained by the Colorado bureau
23 of investigation. The results of such tests shall be furnished to any law
24 enforcement agency upon request.

25 (3.5) Any offender discharged from a correctional facility on or
26 after July 1, 2000, who is not subject to parole or supervision shall submit
27 to a chemical testing of a biological substance sample from the offender

1 to determine the genetic markers thereof. Such testing shall occur at least
2 ninety days prior to the offender's release from incarceration, and the
3 results thereof shall be filed with and maintained by the Colorado bureau
4 of investigation. The results of such tests shall be furnished to any law
5 enforcement agency upon request.

6 **SECTION 7.** 18-1.3-204 (2) (e), Colorado Revised Statutes, is
7 amended to read:

8 **18-1.3-204. Conditions of probation.** (2) (e) If the defendant is
9 convicted of an offense that subjects the defendant to genetic testing
10 pursuant to ~~section 16-11-204.3~~ SECTION 16-11-102.3 (3.5) (b), C.R.S.,
11 the court shall assess to the defendant the cost of collecting and testing a
12 biological substance sample from the defendant as required in ~~section~~
13 ~~16-11-204.3~~ SECTION 16-11-102.3 (3.5) (b), C.R.S.

14 **SECTION 8.** 18-1.3-407 (11.5) (a) (I), Colorado Revised
15 Statutes, is amended to read:

16 **18-1.3-407. Sentences - youthful offenders - legislative**
17 **declaration - powers and duties of district court - authorization for**
18 **youthful offender system - powers and duties of department of**
19 **corrections.** (11.5) (a) (I) Any juvenile who is sentenced to the youthful
20 offender system ~~following conviction of an offense involving unlawful~~
21 ~~sexual behavior, as defined in section 16-22-102 (9), or for which the~~
22 ~~underlying factual basis involved an offense involving unlawful sexual~~
23 ~~behavior,~~ shall submit to and pay for collection and a chemical testing of
24 a biological substance sample from the juvenile to determine the genetic
25 markers thereof.

26 **SECTION 9.** 19-2-924.5 (1) (a), Colorado Revised Statutes, is
27 amended to read:

1 **19-2-924.5. Juveniles committed to department of human**
2 **services - genetic testing.** (1) (a) Any juvenile who ~~is committed to~~ IS
3 IN THE CUSTODY OF the department of human services following
4 adjudication RESULTING IN COMMITMENT for an offense involving
5 unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S., or
6 for ~~which~~ AN OFFENSE the underlying factual basis ~~involved an offense~~
7 ~~involving~~ OF WHICH INVOLVES unlawful sexual behavior, OR WHO IS IN
8 THE CUSTODY OF THE DEPARTMENT OF HUMAN SERVICES FOR AN OFFENSE
9 THAT WOULD CONSTITUTE A FELONY IF COMMITTED BY AN ADULT, shall
10 submit to and pay for collection and a chemical testing of a biological
11 substance sample from the juvenile to determine the genetic markers
12 thereof.

13 **SECTION 10.** 19-2-925.5 (1) (a), Colorado Revised Statutes, is
14 amended to read:

15 **19-2-925.5. Genetic testing.** (1) (a) As a condition of probation
16 or supervision, any juvenile who ~~is adjudicated or receives~~ IS ON
17 PROBATION OR SUPERVISION AS A RESULT OF AN ADJUDICATION OR a
18 deferred adjudication for an offense involving unlawful sexual behavior,
19 as defined in section 16-22-102 (9), C.R.S., or for ~~which~~ AN OFFENSE the
20 underlying factual basis ~~involved an offense involving~~ OF WHICH
21 INVOLVES unlawful sexual behavior, OR FOR AN OFFENSE THAT WOULD
22 CONSTITUTE A FELONY IF COMMITTED BY AN ADULT, shall submit to and
23 pay for collection and a chemical testing of a biological substance sample
24 from the offender to determine the genetic markers thereof.

25 **SECTION 11.** 24-33.5-415.6, Colorado Revised Statutes, is
26 amended to read:

27 **24-33.5-415.6. Offender identification - fund.** (1) There is

1 hereby created in the state treasury the offender identification fund,
2 referred to in this section as the "fund". Moneys in the fund shall consist
3 of payments for genetic testing received from offenders pursuant to
4 sections 16-11-102.3, ~~16-11-104~~, ~~16-11-204.3~~, 18-1.3-407, 19-2-924.5,
5 and 19-2-925.5, C.R.S. Subject to annual appropriations by the general
6 assembly, the executive director and the state court administrator are
7 authorized to expend moneys in the fund to pay for genetic testing of
8 offenders pursuant to sections 16-11-102.3, ~~16-11-104~~, ~~16-11-204.3~~,
9 18-1.3-407, 19-2-924.5, and 19-2-925.5, C.R.S. At the end of any fiscal
10 year, all unexpended and unencumbered moneys in the fund shall remain
11 therein and shall not be credited or transferred to the general fund or any
12 other fund.

13 (2) ~~Upon the effective date of the repeal of section 24-33.5-415.5,~~
14 ~~any moneys remaining in the sex offender identification fund shall be~~
15 ~~credited to the offender identification fund.~~

16 **SECTION 12.** 24-72-302 (4), Colorado Revised Statutes, is
17 amended to read:

18 **24-72-302. Definitions.** As used in this part 3, unless the context
19 otherwise requires:

20 (4) "Criminal justice records" means all books, papers, cards,
21 photographs, tapes, recordings, or other documentary materials,
22 regardless of form or characteristics, that are made, maintained, or kept
23 by any criminal justice agency in the state for use in the exercise of
24 functions required or authorized by law or administrative rule, including
25 but not limited to the results of chemical biological substance testing to
26 determine genetic markers conducted pursuant to ~~sections~~ SECTION
27 16-11-102.3, ~~16-11-104~~, ~~16-11-204.3~~, ~~16-11-308 (4.5)~~, 17-2-201 (5) (h),

1 ~~and 17-22.5-202 (3) (b.5) (H) and (3.5)~~, C.R.S.

2 **SECTION 13.** 24-72-305 (1.5), Colorado Revised Statutes, is
3 amended to read:

4 **24-72-305. Allowance or denial of inspection - grounds -**
5 **procedure - appeal.** (1.5) On the ground that disclosure would be
6 contrary to the public interest, the custodian of criminal justice records
7 shall deny access to the results of chemical biological substance testing
8 to determine the genetic markers conducted pursuant to ~~sections~~ SECTION
9 16-11-102.3, ~~16-11-104, 16-11-204.3, 16-11-308 (4.5), 17-2-201 (5) (h),~~
10 ~~and 17-22.5-202 (3) (b.5) (H) and (3.5)~~, C.R.S.

11 **SECTION 14. Effective date.** This act shall take effect at 12:01
12 a.m. on the day following the expiration of the ninety-day period after
13 final adjournment of the general assembly that is allowed for submitting
14 a referendum petition pursuant to article V, section 1 (3) of the state
15 constitution (August 9, 2006, if adjournment sine die is on May 10,
16 2006); except that, if a referendum petition is filed against this act or an
17 item, section, or part of this act within such period, then the act, item,
18 section, or part, if approved by the people, shall take effect on the date of
19 the official declaration of the vote thereon by proclamation of the
20 governor.