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## A.B. 382

### Proposed Friendly Amendments to ASSEMBLY BILL NO. 382

(Referred to Concurrent Committees on Judiciary and Ways and Means)

SUMMARY—Makes various changes concerning genetic marker testing of certain convicted persons. (BDR 14-923)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Contains Appropriation not included in Executive Budget.

AN ACT relating to criminal procedure; expanding the crimes for which a defendant is required to submit a biological specimen for genetic marker analysis when he is found guilty; requiring a juvenile court to order a genetic marker analysis from a child who is adjudicated delinquent for committing certain unlawful acts; making appropriations; and providing other matters properly relating thereto.

### THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** NRS 176.0913 is hereby amended to read as follows:

176.0913 1. If a defendant is convicted of an offense listed in subsection 4, the court, at sentencing, shall order that:

- (a) The name, social security number, date of birth and any other information identifying the defendant be submitted to the Central Repository for Nevada Records of Criminal History; and
- (b) A biological specimen be obtained from the defendant pursuant to the provisions of this section and that the specimen be used for an analysis to determine the genetic markers of the specimen.

2. If the defendant is committed to the custody of the Department of Corrections, the Department of Corrections shall arrange for the biological specimen to be obtained from the defendant. The Department of Corrections shall provide the specimen to the forensic laboratory that has been designated by the county in which the defendant was convicted to conduct or oversee genetic marker testing for the county pursuant to NRS 176.0917.

3. If the defendant is not committed to the custody of the Department of Corrections, the Division shall arrange for the biological specimen to be obtained from the defendant. The Division shall provide the specimen to the forensic laboratory that has been designated by the county in which the defendant was convicted to conduct or oversee genetic marker testing for the county pursuant to NRS 176.0917. Any cost that is incurred to obtain a biological specimen from a defendant pursuant to this subsection is a charge against the

county in which the defendant was convicted and must be paid as provided in NRS 176.0915. 15

4. Except as otherwise provided in subsection 5, the provisions of subsection 1 apply to a defendant who is convicted of:

- (a) A category A felony,
- (b) A category B felony,
- (c) A category C felony involving the use or threatened use of force or violence against the victim,
- (d) A category D felony involving the use or threatened use of force or violence against the victim.**
- (e) ~~(d)~~ A crime against a child as defined in NRS 179D.210;
- (f) ~~(e)~~ A sexual offense as defined in NRS 179D.410;
- (g) ~~(f)~~ Abuse or neglect of an older person pursuant to NRS 200.5099;
- (h) ~~(g)~~ A second or subsequent offense for stalking pursuant to NRS 200.575;
- (i) ~~(h)~~ An attempt or conspiracy to commit an offense listed in paragraphs (a) to (h) ~~(g)~~, inclusive; or
- (j) Failing to register with a local law enforcement agency as a convicted person as required pursuant to NRS 179C.100, if the defendant previously was:

(1) Convicted in this State of committing an offense listed in paragraph (a), (b), (c), **(d), (e), (f), (g), (h), (i);** or

(2) Convicted in another jurisdiction of committing an offense that would constitute an offense listed in paragraph (a), (b), (c), **(d), (e), (f), (g), (h), or (i);** if committed in this State.

**(k) ~~(j)~~** Failing to register with a local law enforcement agency after being convicted of a crime against a child as required pursuant to NRS 179D.240; or

**(l) ~~(k)~~** Failing to register with a local law enforcement agency after being convicted of a sexual offense as required pursuant to NRS 179D.450.] 44

5. A court shall not order a biological specimen to be obtained from a defendant who has previously submitted such a specimen for conviction of a prior offense unless the court determines that an additional sample is necessary.

**Sec. 2.** NRS 179A.075 is hereby amended to read as follows:

179A.075 1. The Central Repository for Nevada Records of Criminal History is hereby created within the Nevada Highway Patrol Division of the Department.

2. Each agency of criminal justice and any other agency dealing with crime or delinquency of children shall:

(a) Collect and maintain records, reports and compilations of statistical data required by the Department; and

(b) Submit the information collected to the Central Repository in the manner recommended by the Advisory Committee and approved by the Director of the Department.

3. Each agency of criminal justice shall submit the information relating to records of criminal history that it creates or issues, and any information in its possession relating to the genetic markers of a biological specimen of a person who is convicted of an offense listed in subsection 4 of NRS 176.0913, ~~and of a child who is adjudicated delinquent for committing such an offense,~~ to the Division in the manner prescribed by the Director of the Department. The information must be submitted to the Division:

- (a) Through an electronic network;
- (b) On a medium of magnetic storage; or
- (c) In the manner prescribed by the Director of the Department, within the period prescribed by the Director of the Department. If an agency has submitted a record regarding the arrest of a person who is later determined by the agency not to be the person who committed the particular crime, the agency shall, immediately upon 30 making that determination, so notify the Division. The Division shall delete all references in the Central Repository relating to that particular arrest.

4. The Division shall, in the manner prescribed by the Director of the Department:

- (a) Collect, maintain and arrange all information submitted to it relating to:
  - (1) Records of criminal history; and
  - (2) The genetic markers of a biological specimen of a person who is convicted of an offense listed in subsection 4 of NRS 176.0913, ~~and of a child who is adjudicated delinquent for committing such an offense.~~
- (b) When practicable, use a record of the personal identifying information of a subject as the basis for any records maintained regarding him.
- (c) Upon request, provide the information that is contained in the Central Repository to the State Disaster Identification Team of the Division of Emergency Management of the Department.

5. The Division may:

- (a) Disseminate any information which is contained in the Central Repository to any other agency of criminal justice;
- (b) Enter into cooperative agreements with federal and state repositories to facilitate exchanges of information that may be disseminated pursuant to paragraph (a); and (c) Request of and receive from the Federal Bureau of Investigation information on the background and personal history of any person whose record of fingerprints the Central Repository submits to the Federal Bureau of Investigation and:
  - (1) Who has applied to any agency of the State of Nevada or any political subdivision thereof for a license which it has the power to grant or deny;
  - (2) With whom any agency of the State of Nevada or any political subdivision thereof intends to enter into a relationship of employment or a contract for personal services;
  - (3) About whom any agency of the State of Nevada or any political subdivision thereof has a legitimate need to have accurate personal information for the protection of the agency or the persons within its jurisdiction; or
  - (4) For whom such information is required to be obtained pursuant to NRS 449.179. To request and receive information from the Federal Bureau of Investigation concerning a person pursuant to this subsection, the Central Repository must receive the person's

complete set of fingerprints from the agency or political subdivision and submit the fingerprints to the Federal Bureau of Investigation for its report.

6. The Central Repository shall:

(a) Collect and maintain records, reports and compilations of statistical data submitted by any agency pursuant to subsection 2.

(b) Tabulate and analyze all records, reports and compilations of statistical data received pursuant to this section.

(c) Disseminate to federal agencies engaged in the collection of statistical data relating to crime information which is contained in the Central Repository.

(d) Investigate the criminal history of any person who:

(1) Has applied to the Superintendent of Public Instruction for a license;

(2) Has applied to a county school district or a private school for employment; or

(3) Is employed by a county school district or a private school, and notify the superintendent of each county school district and the Superintendent of Public Instruction, or the administrator of each private school, as appropriate, if the investigation of the Central Repository indicates that the person has been convicted of a violation of NRS 200.508, 201.230, 453.3385, 453.339 or 453.3395, or convicted of a felony or any offense involving moral turpitude.

(e) Upon discovery, notify the superintendent of each county school district or the administrator of each private school, as appropriate, by providing the superintendent or administrator with a list of all persons:

(1) Investigated pursuant to paragraph (d); or

(2) Employed by a county school district or private school whose fingerprints were sent previously to the Central Repository for investigation, who the Central Repository's records indicate have been convicted of a violation of NRS 200.508, 201.230, 453.3385, 453.339 or 453.3395, or convicted of a felony or any offense involving moral turpitude since the Central Repository's initial investigation. The superintendent of each county school district or the administrator of each private school, as applicable, shall determine whether further investigation or action by the district or private school, as applicable, is appropriate.

(f) Investigate the criminal history of each person who submits fingerprints or has his fingerprints submitted pursuant to NRS 449.176 or 449.179.

(g) On or before July 1 of each year, prepare and present to the Governor a printed annual report containing the statistical data relating to crime received during the preceding calendar year. Additional reports may be presented to the Governor throughout the year regarding specific areas of crime if they are recommended by the Advisory Committee and approved by the Director of the Department.

(h) On or before July 1 of each year, prepare and submit to the Director of the Legislative Counsel Bureau, for submission to the Legislature, or the Legislative Commission when the Legislature is not in regular session, a report containing statistical data about 36 domestic violence in this State.

(i) Identify and review the collection and processing of statistical data relating to criminal justice and the delinquency of children by any agency identified in subsection 2, and make recommendations for any necessary changes in the manner of collecting and processing statistical data by any such agency.

7. The Central Repository may:

(a) At the recommendation of the Advisory Committee and in the manner prescribed by the Director of the Department, disseminate compilations of statistical data and publish statistical reports relating to crime or the delinquency of children.

(b) Charge a reasonable fee for any publication or special report it distributes relating to data collected pursuant to this section. The Central Repository may not collect such a fee from an agency of criminal justice, any other agency dealing with crime or the delinquency of children which is required to submit information pursuant to subsection 2 or the State Disaster Identification Team of the Division of Emergency Management of the Department. All money collected pursuant to this paragraph must be used to pay for the cost of operating the Central Repository.

(c) In the manner prescribed by the Director of the Department, use electronic means to receive and disseminate information contained in the Central Repository that it is authorized to disseminate pursuant to the provisions of this chapter.

8. As used in this section:

(a) "Advisory Committee" means the Committee established by the Director of the Department pursuant to NRS 179A.078.

(b) "Personal identifying information" means any information designed, commonly used or capable of being used, alone or in conjunction with any other information, to identify a person, including, without limitation:

(1) The name, driver's license number, social security number, date of birth and photograph or computer-generated image of a person; and

(2) The fingerprints, voiceprint, retina image and iris image of a person.

(c) "Private school" has the meaning ascribed to it in NRS 394.103.

Sec. 3. Chapter 62H of NRS is hereby amended by adding thereto a new section to read as follows:

~~1. Except as otherwise provided in subsection 3, if a child is adjudicated delinquent for committing an offense listed in subsection 4 of NRS 176.0913, the juvenile court shall order that a biological specimen be obtained from the child and that the specimen be used for an analysis to determine the genetic markers of the specimen in accordance with the provisions set forth in NRS 176.0913 to 176.0917, inclusive.~~

~~2. Any genetic markers determined from a biological specimen which is obtained from a child pursuant to the provisions of this section:~~

~~(a) May be retained in a local file or local system for the automatic retrieval of such genetic markers if they are retained under special security measures that limit inspection of the genetic markers to law enforcement officers who are conducting criminal investigations.~~

~~(b) Must be submitted to the Central Repository with a description of the child and the unlawful act that the child committed. The Central Repository shall retain the genetic markers and information of the child under special security measures that limit inspection of the genetic markers to:~~

~~(1) Law enforcement officers who are conducting criminal investigations; and~~

~~(2) Officers and employees of the Central Repository who are assisting law enforcement officers with criminal investigations or who are conducting research or performing a statistical analysis.~~

~~3. The Division of Child and Family Services shall arrange for the biological specimen to be obtained from the child and provide the specimen to the forensic laboratory that has been designated by the county in which the child is adjudicated delinquent to conduct or oversee genetic marker testing for the county pursuant to NRS 176.0917.~~

**Sec. 4.** 1. There is hereby appropriated from the State General Fund to the Las Vegas Metropolitan Police Department Forensic Laboratory to conduct and oversee any genetic marker testing for the county, to maintain and purchase equipment and supplies relating to genetic marker testing and to pay for the salaries, reasonable travel expenses, training and continuing education of employees of the laboratory who conduct or oversee genetic marker testing:

For the Fiscal Year 2005-2006.....	<del>[\$650,000]</del>	<u>\$600,000</u>
For the Fiscal Year 2006-2007.....	<del>[\$650,000]</del>	<u>\$600,000</u>

2. The sums appropriated by subsection 1 are available for either fiscal year. Any balance of those sums must not be committed for expenditure after June 30, 2007, and must be reverted to the State General Fund on or before September 21, 2007.

**Sec. 5.** 1. There is hereby appropriated from the State General Fund to the Forensic Science Division of the Washoe County Sheriff's Office Crime Laboratory to conduct and oversee any genetic marker testing for the county, to maintain and purchase equipment and supplies relating to genetic marker testing and to pay for the salaries, reasonable travel expenses, training and continuing education of employees of the laboratory who conduct or oversee genetic marker testing:

For the Fiscal Year 2005-2006.....	<del>[\$350,000]</del>	<u>\$400,000</u>
For the Fiscal Year 2006-2007.....	<del>[\$350,000]</del>	<u>\$400,000</u>

2. The sums appropriated by subsection 1 are available for either fiscal year. Any balance of those sums must not be committed for expenditure after June 30, 2007, and must be reverted to the State General Fund on or before September 21, 2007.

**Sec. 6.** This act becomes effective on July 1, 2005.