

Light Crime Ohio

Report from the
Ohio DNA Advisory Council

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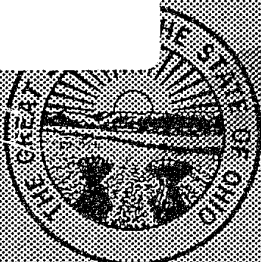
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From the Offices of:
Ohio Attorney General Lee Fisher
&
Ohio Lieutenant Governor Mike DeWine
October 1994



Attorney General
Lee Fisher

November 15, 1994

Emil H. Levine
National Institute of Justice/NCJRS
Acquisition Department S/L
Box 6000
Rockville, MD 20850

Dear Mr. Levine,

The enclosed report is in response to your letter of May 13, 1994, requesting certain criminal justice-related materials produced by agencies such as ours. I hope that this report is of some assistance to you, and to the criminal justice community.

Very truly yours,

A handwritten signature in cursive script, reading "Jeffery W. Clark".

JEFFERY W. CLARK
Assistant Attorney General

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EXECUTIVE SUMMARY

The Ohio DNA^a Advisory Council recommends establishing a state-level DNA testing laboratory at the Attorney General's Bureau of Criminal Identification and Investigation, developing a DNA database by collecting samples from felons convicted of specific violent crimes, and making the information and resources available to law enforcement agencies across the state and nation in order to help them solve crimes.

Attorney General Lee Fisher and Lieutenant Governor Mike DeWine appointed the council in December 1993. The Council — ten members representing state and local law enforcement, prosecutors, corrections officials, and forensic scientists — researched legal and scientific issues related to the law enforcement application of DNA analysis.

The Council found that DNA testing is superior to other types of evidence testing, such as blood typing, in identifying or excluding particular suspects. DNA testing can also be conducted effectively on more types of evidence^b, and generally on smaller samples than other scientific testing procedures.

The Council found that Ohio courts have been unanimous in their favorable treatment of DNA evidence. The Council also found that for every reported decision, there have been dozens of unreported cases where DNA evidence has become so routine that legal battles over the admissibility of such evidence have all but disappeared.

Recommendations

The Council's report contains 19 specific recommendations. These recommendations cover collection and testing procedures, privacy and access issues, scientific criteria, and funding issues.

The recommendations are based on the Council's determination that DNA analysis, when conducted under proper and accepted medical and research conditions, is a useful tool for law enforcement in fighting violent crime. Law enforcement can use analysis of DNA samples collected at a crime scene to link the specimen to a suspect or suspects, or to eliminate certain suspects. DNA analysis and comparison also gives prosecutors invaluable evidence to present at trial.

DNA Database

A DNA database would be useful in the same way that the current database of fingerprints and photographs kept by law enforcement agencies are effective crime-fighting tools.

The Council recommends creating the database by requiring everyone convicted of ten of the most violent and egregious crimes^c to submit a sample for DNA analysis. The Council selected crimes that are likely to produce biological evidence of the offender at a crime scene. Investigators would collect evidence from a crime scene, have it analyzed, and compare the results to the DNA profiles in the database.

^a A molecule found in virtually every living cell of all living organisms, and having a unique structure in each individual.

^b Blood, semen, tissue, bone marrow, hair roots, saliva, urine and tooth pulp are sources of DNA evidence.

^c Aggravated murder, murder, kidnapping, child stealing, rape, sexual battery, corruption of a minor (felony), gross sexual imposition, felonious sexual penetration, and aggravated burglary.

The Council placed a high priority on collecting samples from sex offenders since the high rate of recidivism is well-documented in sex-related crimes. The Council also recommends that samples from juvenile offenders should be included in the database. It is the Council's recommendation that, if a defendant's conviction is reversed, the person's record should be removed from the database.

The database would also be used for statistical reporting purposes, to assist in the identification of human remains from natural disasters, and to assist in the identification of missing persons.

Legislation

The Council drafted model legislation for the Ohio General Assembly to consider. This legislation would:

- 1) establish a central DNA laboratory at the BCI&I,
- 2) allow creation of a statewide database,
- 3) provide for blood samples to be taken from individuals convicted of specific crimes,
- 4) prohibit access to the database information by anyone other than law enforcement agencies and defendants for criminal defense purposes.

The legislation would also require the state to provide standardized kits to all law enforcement agencies to be used in the collection of samples for DNA testing and allow for contracts with other public or private laboratories to conduct specimen analysis as long as the lab performs DNA typing according to the standards established by the BCI&I.

The legislation does not include specific standards nor does it endorse particular testing methods since today's standards could be out-of-date by the time the legislation takes effect, but instead allows scientists and the BCI&I to establish rules and standards in accordance with the most current technology.

Costs and funding

The Council analyzed statistics and information from the Ohio Department of Rehabilitation and Corrections, the Ohio Department of Youth Services, and additional information including an examination of other states' laboratories. Their study concludes that Ohio should prepare to analyze approximately 4,800 samples per year.

Set-up costs for a DNA laboratory with the capacity to analyze this number of samples would be approximately \$2.9 million. This would include necessary scientific equipment as well as construction of areas for analysis, storage, refrigeration of specimens, and administrative support. Annual operating costs are projected to be \$1.3 million. This includes supplies necessary to conduct the testing, salaries and fringe benefits of the employees performing and supporting the DNA analysis, and maintenance.

The Council's report also includes a scientific and technical explanation of DNA analysis, including the two most prevalent types of testing techniques,^d a comparison of similar legislation in 19 states, and copies of the relevant laws from other states.

^d Restriction Fragment Length Polymorphism (RFLP), and Polymerase Chain Reaction (PCR).

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PREFACE

On November 23, 1993, a two-year investigation conducted by several law enforcement agencies throughout Ohio and Indiana ended with the arrest of a suspect. The man is believed to have raped or attempted to rape 17 women in what can only be called a two-year reign of terror.

All of the rapist's victims were females between the ages of 45 and 85. The rapist only attacked women who lived alone and usually cut the phone lines before binding his victims with tape and brutally violating them.

Law enforcement agencies began focusing their investigation for a serial rapist after comparing the similar physical descriptions of the victims' attacker and studying the methods of operation used by him in each case. They started with a list of nearly 300 suspects.

DNA samples obtained by law enforcement from eleven crime scenes matched the suspect's blood and resulted in his arrest. Although he had been a suspect for several months, the DNA match provided law enforcement with the probable cause needed to arrest him. Without the DNA evidence, the man undoubtedly would have been able to continue terrorizing women. Significantly, DNA analysis was also used to eliminate 28 other suspects in the case.

The FBI laboratory in Washington, D.C. performed all of the DNA testing in this case. At that time, the FBI was taking between twelve to fourteen weeks to complete a DNA analysis. Today, due to a tremendous backlog, the FBI is taking over six months to analyze and compare DNA data. When Ohio establishes its own DNA laboratory, it is our expectation that local law enforcement will have more immediate access to DNA testing.

INTRODUCTION TO DNA

Deoxyribonucleic acid, or DNA, is the molecule found in the nucleus of all nucleated cells in all living organisms. In humans, this includes virtually all cells, with the exception of red blood cells. DNA is arranged in packets of information called chromosomes, with twenty-three pairs of chromosomes found in human DNA. It is the unique structure of the DNA molecule in each individual that provides that person with his or her genetic code.¹

For approximately the past two decades, the DNA molecule has been the subject of extensive scientific research worldwide. The focus of most of the research on human DNA has been (and continues to be) on genetic disease research and diagnostics. Laboratory analysis of the DNA molecule has led to significant advancements in the ability of the medical community to predict, diagnose, and understand the underlying causes of genetic diseases such as sickle cell anemia, Huntington's disease, Duchenne muscular dystrophy, and certain forms of cancer.

In the course of their DNA research focusing on potential medical applications, scientists discovered that the DNA analyses undertaken in the medical and research contexts were very useful tools for the purpose of human identification. It was this discovery that ultimately led to the use of DNA testing procedures in the field of forensic science.

The features of DNA that make its analysis useful for forensic purposes are as follows:

1. DNA is unique to each individual, such that no two people other than identical twins will have the same DNA;
2. DNA is constant in all cells, such that DNA extracted from an individual's blood, semen, saliva, tissue, or hair will not vary;
3. DNA is constant throughout the lifetime of an individual, such that the structure of the DNA molecule will be identical from birth to death;
4. While DNA is unique to each individual, approximately ninety-nine percent of human DNA is the same in all humans;
5. Within the regions of DNA where variation is found, scientists have discovered certain genes that are polymorphic, meaning that these genes appear in many different forms in different individuals.
6. Although it is not possible with today's technology to analyze the entire DNA molecule, current technology allows for analyses of segments of DNA, including the segments where highly polymorphic genes have been found;

¹For a more detailed discussion of the structure and function of the DNA molecule, see Attachment A.

7. It is possible, based on the analyses of different polymorphic genes found in human DNA, to draw conclusions regarding whether samples of bodily fluids or tissue (like blood or semen at a crime scene) are consistent with having originated from a particular individual (like a suspect).

"Forensic DNA testing" or "forensic DNA typing" broadly refers to those molecular genetics laboratory techniques that have been transferred from the DNA medical research arena for use in the analysis of DNA evidence in criminal investigations.² While the particular laboratory techniques are complex, it is useful, at least initially, to think of forensic DNA testing as nothing more than an extension of the conventional forensic serology that has been used for decades in criminal cases. In both DNA testing and conventional serology, the goal is the same: to associate or disassociate biological crime scene evidence, e.g., a blood stain (referred to throughout this report as a sample or specimen), with a particular individual, e.g., a suspect.

In conventional serology, protein and enzyme characteristics are analyzed for comparative purposes. If a crime scene sample and a suspect's known sample do not share the same enzyme or protein characteristics, then the suspect could not have been the source of the crime scene evidence. If the samples share the same blood characteristics, then the suspect may be the source of the crime scene sample. If the blood types match, population studies are then reviewed to determine how rare or common the particular blood type or types are.

In forensic DNA testing, polymorphic genes are analyzed. If the DNA test shows that the forms of the DNA polymorphisms detected in a crime scene sample do not match the forms detected in a suspect's sample, then the suspect is excluded as a possible source of the crime scene evidence. If the samples match with respect to the DNA polymorphisms, then the DNA analyst will conclude that the suspect may be the source of the crime scene sample. If there is a match, population studies are reviewed to determine the relative rareness of the particular DNA polymorphisms detected.

² For a more detailed description of the laboratory techniques that are most commonly used to perform forensic DNA analysis, see Attachment A.

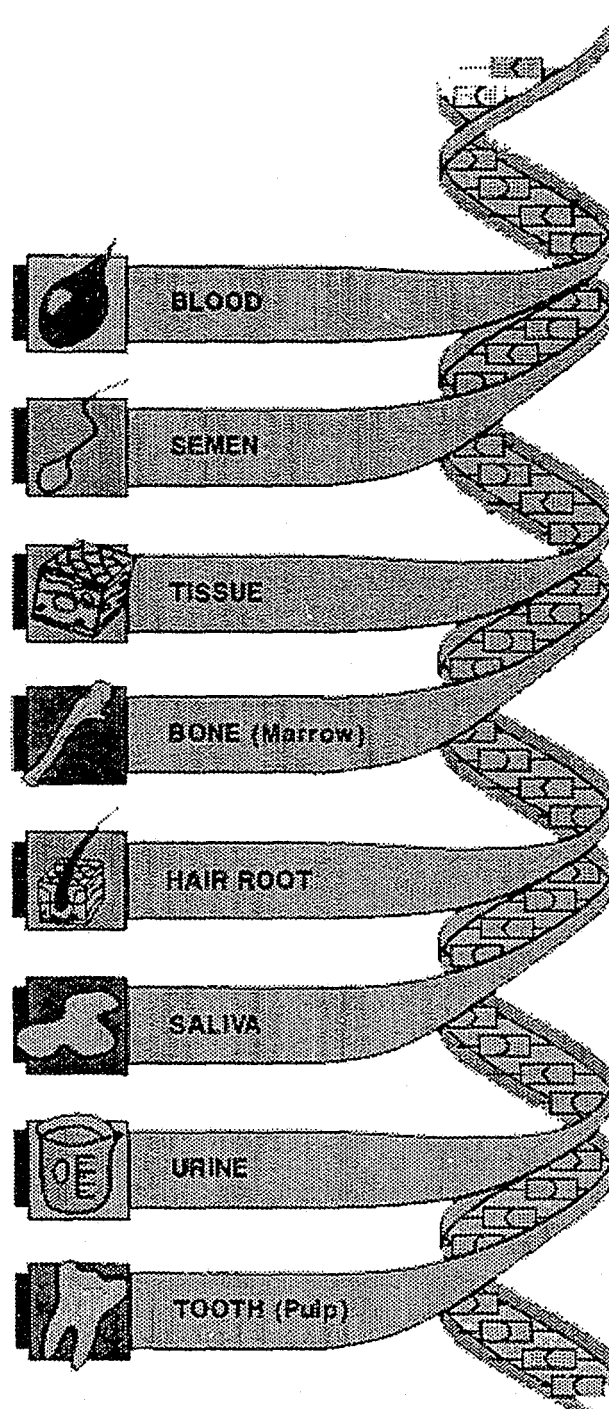
The two critical differences between forensic DNA testing and conventional forensic serology are what have made forensic DNA testing such an important tool in the fight against violent crime. They are: 1) the discriminating power of DNA tests, and 2) the nature of the crime scene samples which can be analyzed with DNA tests.

Regarding the discriminating power of the tests, forensic DNA testing generally leads to stronger statements about the likelihood that a particular individual is the source of a particular piece of biological evidence. While a relatively large percentage of the population may share the same blood type, population studies have confirmed that generally a much smaller percentage of the population will share the same pattern of DNA polymorphisms. In forensic DNA typing, it is common for a DNA analyst to report that a matching DNA pattern detected in both the crime scene evidence and the suspect's blood sample is so rare that less than a fraction of one percent of the population would be expected to share this DNA pattern. In fact, if enough polymorphic regions are analyzed, it is possible in some cases for the DNA analyst to conclude that a suspect is definitively the source of a particular sample of evidence. Forensic DNA testing is also a more powerful tool of exclusion; a suspect who is included through serology as a possible source of biological evidence may very well be excluded when the more discriminating DNA tests are performed.

With regard to the nature of the crime scene samples, DNA testing can generally be performed on more types of evidence including hair, bone, tissue, in addition to the bodily fluids that can be analyzed with either serological or DNA techniques (see Illustration 1). Moreover, DNA tests can generally be performed on smaller crime scene samples. When amplification-based DNA techniques are employed, it is not uncommon for DNA analysts to obtain meaningful results even though no meaningful result has been obtained with conventional blood-typing.

SOURCES OF DNA EVIDENCE

Illustration 1



The forensic application of DNA typing was first suggested by scientists in the United Kingdom and was used in casework in that country in 1985. Since that time, numerous crime labs around the world have implemented forensic DNA typing programs.

In this country, private forensic DNA labs began performing DNA tests in late 1986. The FBI, which is generally considered the leading public crime laboratory involved in DNA testing, began casework in 1988. Since that time, state and local crime labs have gone "on-line" with their DNA testing programs.

U.S. courts have responded to the ever-increasing use of forensic DNA testing by admitting the results of DNA tests into evidence almost every time they are offered. With the exception of a small number of cases in which DNA evidence has been ruled inadmissible because of disputes over the validity of statistical estimates (and not because of any dispute over the fundamental validity of DNA testing), virtually all state and federal courts have accepted the evidence. Ohio courts have been unambiguous in their favorable treatment of DNA evidence. Every appellate court in Ohio that has considered the admissibility of DNA testing evidence has ruled in favor of its admission. State legislatures have also reacted favorably to the use of DNA testing in criminal investigations. A number of states have passed statutes requiring convicted felons to provide blood samples for DNA analysis.

Judicial and legislative acceptance of forensic DNA testing has come because legislators and judges have listened to what the scientific community has said about the validity of using DNA typing in criminal investigations. In the last six years, the scientific journals have been filled with peer-reviewed papers and studies supporting the reliability of forensic DNA testing. Expert witnesses, including forensic scientists trained in DNA technology and scientists from the broader field of molecular genetics, have testified in hundreds of criminal cases about the reliability of DNA testing. The critics of DNA testing (who have appeared as defense experts in court far more frequently than they have appeared as authors of peer-reviewed scientific papers) have generally limited their criticisms to the manner in which particular laboratories perform certain aspects of certain tests. Even the critics have not questioned the fundamental validity of forensic DNA testing.

In 1990, the Office of Technology Assessment, an analytical arm of the U.S. Congress and its technical advisor, published its extensive report entitled "Genetic Witness: Forensic Uses of DNA Tests." The report reviewed the vast body of research that had been undertaken on forensic DNA testing and concluded that "forensic uses of DNA tests are both reliable and valid when properly performed and analyzed by skilled personnel... Questions about the validity of DNA typing - either the knowledge base supporting technologies that detect genetic differences or the underlying principles of applying the techniques per se - are red herring that do the public a disservice." This favorable conclusion about the reliability of forensic DNA testing was repeated in April, 1992, when the National Research Council published its similarly exhaustive report on forensic DNA testing, entitled "DNA Technology in Forensic Science." This report also surveyed the significant published scientific literature regarding DNA testing and this report also confirmed the reliability of using DNA typing in criminal cases.

In summary, advancements in the field of molecular genetics have led to an important advancement in the field of forensic science: forensic DNA testing. The usefulness of DNA typing in criminal investigations has been recognized by countless police agencies, crime labs, courts, and legislatures in this country. Based on its considered study of forensic DNA typing, the DNA Advisory Council recommends that its usefulness be fully recognized in Ohio.

DNA ADVISORY COUNCIL RECOMMENDATIONS

The following is a summary of the recommendations regarding issues identified by the members of the DNA Advisory Council.

ESTABLISH STATE-LEVEL DNA TESTING PROGRAM

The Council recommends the establishment of a state-level DNA testing program in Ohio, which should include DNA testing in criminal investigation and create a DNA database. The Council suggests that the state-level program be centralized and all policies and procedures specific to the DNA testing program be developed in conjunction with the DNA Central Laboratory. Due to the forensic capabilities already in place, the Council also suggests that the laboratory be located at the Bureau of Criminal Identification and Investigation (BCI&I), a section of the Ohio State Attorney General's office.

TYPE OF TESTING

The current technology provides for several types of DNA testing. The Council recommends that Restriction Fragment Length Polymorphism (RFLP) tests be performed on the database samples because of the compatibility with the FBI's Combined DNA Index System (CODIS), which is based on the results of RFLP testing. This will create a national link among all federal, state, and local agencies in participating states. Polymerase Chain Reaction (PCR) technology, on the other hand, is appropriate in case work, especially in cases involving limited samples or for exclusionary purposes. However, the legislation should not restrict the laboratory staff to performing only a specific type of testing. Instead the Council recommends language that gives the BCI&I authority to perform general DNA testing because, like the proficiency standards and procedures, specific language in this area would hamper the laboratory's ability to run the most efficient tests as technology advances.

DATABASE

Establishing a DNA database has three purposes: 1) the detection and/or exclusion of suspects during criminal investigations. (This database should assist in matching unknown suspect cases against known convicted offenders. Both the known suspect and unknown suspect cases will be handled by the DNA Central Laboratory); 2) the identification of missing persons, victims of natural disasters, and unidentifiable bodies; and, 3) the calculation of population frequency statistics which will be reported in court with the results of DNA testing.

IDENTIFYING OFFENDERS FOR MANDATORY SAMPLE/SPECIMEN COLLECTION

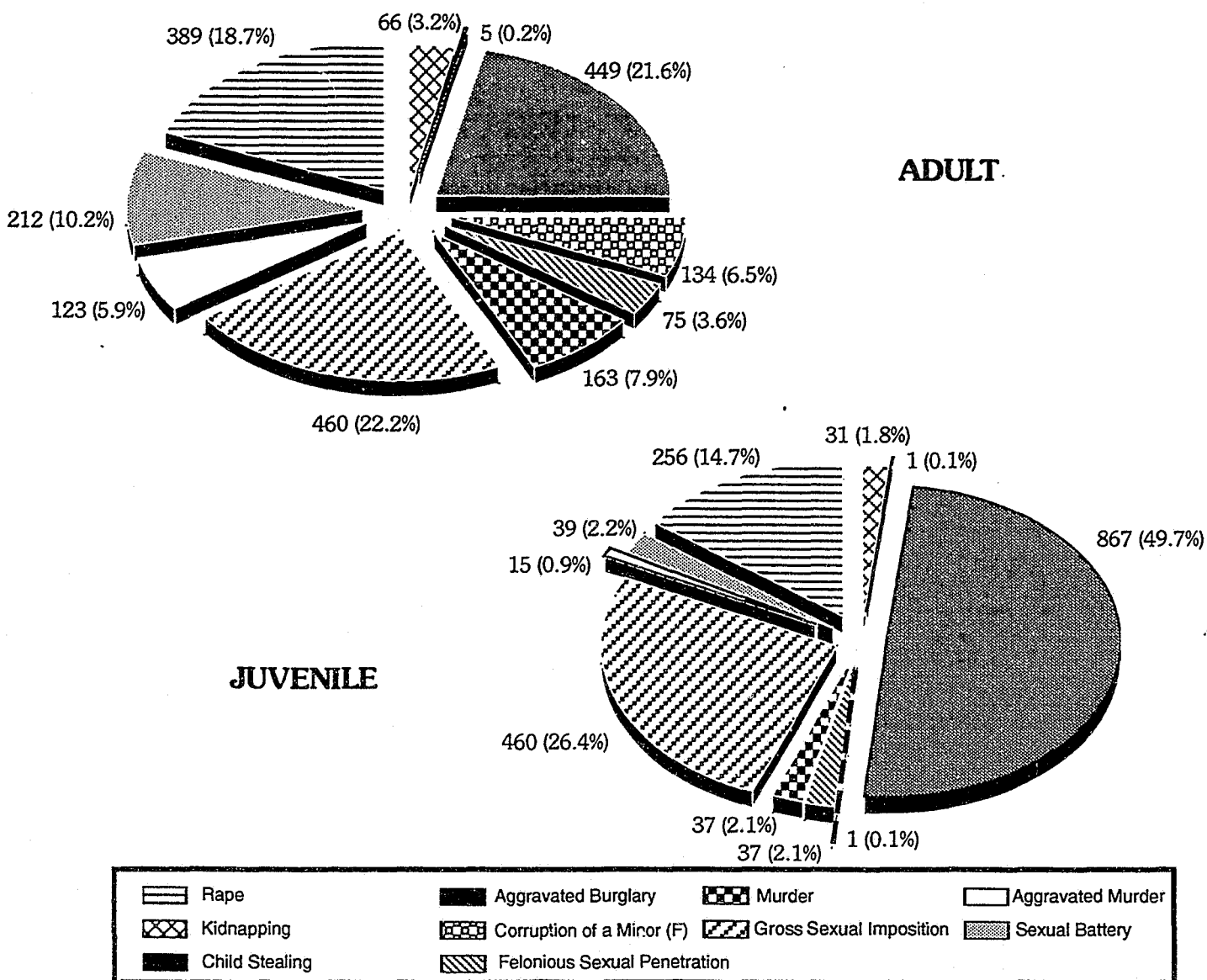
The Council recommends the following felonies be included in the DNA database:

- 1) 2903.01 Aggravated Murder
- 2) 2903.02 Murder
- 3) 2905.01 Kidnapping
- 4) 2905.04 Child Stealing
- 5) 2907.02 Rape
- 6) 2907.03 Sexual Battery
- 7) 2907.04 Corruption of a Minor (Felony)
- 8) 2907.05 Gross Sexual Imposition
- 9) 2907.12 Felonious Sexual Penetration
- 10) 2911.11 Aggravated Burglary

See Illustration 2.

RECOMMENDED OFFENSES FOR DNA TESTING

Illustration 2



ENTRY INTO DATABASE

Regardless of the particular sentence, the Council recommends, sample collection should occur only after conviction and during intake or incarceration in the correctional system pursuant to a court order. The Council also recommends that blood sampling be the preferred sample for DNA testing; however, this should not preclude the testing of other specimens. In addition, collection should be standardized throughout the State and completed within fifteen days to ensure the validity of the testing and the compatibility of results for database comparisons. Regarding offenders convicted prior to enactment of the DNA legislation who are currently incarcerated, the Council suggests that a sample be drawn as an internal administrative order, not as a condition of release. Persons presently on parole, probation, or non-institutionalized aftercare are not included in this provision.

Due to the high rate of sex offender recidivism, the Council recommends that the legislation instruct the BCI&I to enter into the database test results from samples of sex offenders first and then store or enter all other samples or results as case loads and staff resources allow.

JUVENILE OFFENDERS

The Council recommends that juveniles who are convicted of a crime, which if committed by an adult would require the collection of a sample in accordance with DNA legislation, be required to submit a DNA sample for analysis. Like adults whose DNA test results are entered into the database, juvenile samples should be expunged only upon a reversal of the conviction, not upon reaching adulthood.

EXPUNGEMENT

All data that is a result of the analysis of the collected samples should be included in the database for an indefinite period of time with the exception of samples and related records of an individual whose case has been reversed. The legislation should specifically reference that expungement of DNA samples and the identifying information on related records be removed from the database in instances of formal case reversals. For statistical reference only, the record will be kept in the database, but all identifying information will be expunged.

COLLECTION PROCEDURES

To ensure standardization during the collection process as well as to centralize the costs of the collection procedure, the Council suggests that the Bureau of Criminal Identification and Investigation (BCI&I) provide collection kits and return postage to the state and local agencies mandated to collect samples. Funding for these kits should be provided by the State of Ohio, and collection procedures should be defined by the BCI&I.

NONCOMPLIANCE PENALTY

Although collection will be mandated, the Council agrees that there should be no formal penalty imposed on agencies that do not comply with collection requirements. Instead, the legislation should provide for the court to order the collection of a sample. Therefore, if the local agency does not comply with the court order, a contempt proceeding may be initiated.

TESTING REQUIREMENTS

Although samples should be collected from persons convicted of the offenses listed above, case load constraints on the laboratory may prevent immediate testing. Consequently, the Council suggests that samples that are not immediately tested remain in storage at the DNA central laboratory located at the Bureau of Criminal Identification and Investigation until testing is possible.

PRIVACY AND ACCESS

A criminal defendant's rights to access DNA testing information (including test results and related information) during the course of a criminal case should be governed by existing rules regarding the discovery of scientific evidence in criminal cases.

Due to the potential breach of privacy, DNA test results and information regarding the results should be considered as a criminal justice exclusion of the Open Records Law. Access should be limited to law enforcement agencies for the purposes stated herein. The legislation should mandate strict criminal penalties for the abuse or misuse of all DNA data.

LABORATORY STANDARDS AND PROCEDURES

The Council recommends that the legislation not specifically establish proficiency standards and procedures required for the accreditation of labs. Advancing technology in DNA analysis requires a flexible means of modifying procedures and standards as needed. Ohio's program should, however, be compatible with the FBI's national program, Combined DNA Index System (CODIS).

WAIVER OF SPEEDY TRIAL PROVISION

The council recommends that the court should be encouraged to allow reasonable requests for a suspension of the ninety-day speedy trial provision for persons incarcerated while awaiting trial where DNA evidence is at issue because case history has shown that it is very difficult to get complete DNA analytical results in such a short time frame. However, a waiver of speedy trial provision should not be specified in this legislation. A waiver provision would be more appropriate as a separate piece of legislation.

CONTRACT AUTHORITY

While the legislation should be structured with one central lab in mind, the Council suggests it not prohibit the BCI&I from establishing regional labs at a later date. Consequently, the BCI&I should reserve the right to contract testing to other public or private laboratories as long as those laboratories meet the same proficiency and privacy standards that apply to the state laboratory.

Allowing other labs to perform the DNA analysis would help to quickly build up the database and prevent the BCI&I from becoming backlogged during the initial development stage.

SCIENTIFIC GUIDANCE

In order to address major technological advances or questions of ethics and standards, the Council suggests that a Scientific Advisory Committee be established to assist in guiding the state of Ohio's DNA program into the future.

LABORATORY ACCREDITATION AND CERTIFICATION

At the time of this report, there is no single accreditation or certification program which is unanimously recognized as necessary for forensic DNA testing laboratories. The council recommends that should such an accreditation or certification program become recognized by the scientific community, the laboratory should seek certification and/or accreditation from that program or programs. The decision regarding which certification and/or accreditation programs are appropriate for participation by the laboratory should be left to the BCI&I and the Scientific Advisory Committee.

TRAINING AND EDUCATION

The council recommends that the laboratory take an active role in educating local law enforcement officials, including investigators and prosecutors, regarding the capabilities of the laboratory, the particular techniques employed by the laboratory, the handling of crime scene samples, the collection and handling of known samples, the presentation of DNA evidence in court, and other matters relating to DNA testing.

FUNDING

The Council also recommends that funding for the DNA laboratory and related database functions should be specified in the legislation as a separate line item for the BCI&I budget to be calculated each biennium period rather than as part of the BCI&I's total budget. To accurately estimate the funds needed to run the program, the legislation should specify the number of personnel needed to conduct the DNA testing for the specific number of tests done during each period. The legislation should also specifically include funds for the DNA sample kits.

PERSONNEL

The Council recommends that the following personnel staff the DNA laboratory:

Director with a Ph.D. and DNA testing experience

Examiners and Team Leaders

Computer Scientist

Clerical Staff

The quantity of personnel is based on laboratory size and case load. Approximately twenty-seven percent in additional personnel costs should be added for benefits.

ISSUES AND DECISIONS

This section of the DNA Advisory Council's Recommendation Report addresses some of the court decisions and professional opinions which, by direct discussion or inference, drove the recommendations of the Advisory Council.

ADMISSIBILITY IN COURT

Forensic DNA testing has been ruled admissible in criminal trials by an overwhelming majority of U.S. courts. As of June 20, 1994, there have been a total of 142 reported state and federal court decisions addressing the admissibility of DNA evidence using the RFLP technique. Of the 142 reported decisions, 122 uphold the admissibility of the evidence.³ As of June 20, 1994, there have also been ten reported decisions addressing the admissibility of DNA test results from the PCR methodology. All ten decisions support the admissibility of PCR test results.⁴

Ohio courts have been unanimous in their favorable treatment of DNA evidence. There is a substantial body of appellate case law in Ohio sustaining the admissibility of DNA evidence. The most significant state court decision was the Supreme Court's opinion in 1992 in the *Pierce* case.⁵ In *Pierce*, the Supreme Court thoroughly considered the relevant scientific criticisms of DNA testing using the RFLP technique, including criticisms of the statistical methodology, and found that the evidence passed the "relevancy" standard of admissibility in Ohio. In so doing, the Court ruled that the criticisms of the evidence were matters of weight and not admissibility. The Court also ruled that there was no longer a need for trial courts to conduct admissibility hearings on the evidence.

³ The majority of the 20 unfavorable decisions on RFLP testing find fault only with the manner in which statistical calculations have been performed by certain DNA testing laboratories. The decisions do not reject the RFLP technique. In fact, decisions which comment unfavorably on the statistical calculations affirmatively uphold the RFLP technique as being a generally accepted and reliable laboratory technique.

⁴ It is important to note that the statistics cited in this paragraph reference only reported decisions. For every reported decision, there have been literally dozens of unreported cases where DNA evidence has been used. In many states, the use of DNA evidence has become so routine that legal battles over the admissibility of such evidence have all but disappeared.

⁵ *State v. Pierce*, 64 Ohio St. 3d 490 (1992)

The most significant federal court ruling to date on DNA testing using the RFLP technique, the *Bonds/Yee case*,⁶ originated in an Ohio trial court. In *Bonds/Yee*, a district court in Toledo ruled that DNA evidence was admissible under the *Frye* general acceptance standard based on the testing of several of the nation's leading experts on molecular genetics and population genetics.⁷ This ruling was affirmed in 1993 by the Sixth Circuit Court of Appeals, which analyzed the evidence under Federal Evidence Rule 702. Because of the extensive nature of the challenge to the evidence and because of the extensive coverage in scientific and other publications of the admissibility hearing in *Bonds/Yee*, the forensic science community regards the favorable treatment of DNA evidence in that case as very significant.

The favorable treatment of DNA evidence by Ohio courts means, in all likelihood, that DNA evidence from a new, state-wide laboratory will be accepted by Ohio courts. The appellate case law has upheld DNA evidence in cases involving a number of different private and public laboratories. There is no reason to believe that a new public lab, assuming it employs the same basic techniques as those used by other DNA labs, will be treated differently.

⁶ *United States v. Bonds*, 12 F.3d 540 (6th Cir. 1993), affirming, *United States v. Yee*, 134 F.R.D. 161 (N.D. Ohio 1991)

⁷ One of the early cases dealing with the acceptance of scientific evidence into a criminal case was *Frye v. U.S.* The polygraph tests in the *Frye* case could be admitted into evidence if the reliability of the test was accepted in its own field. The oft-quoted test propounded by the *Frye* court is as follows: "Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Somewhere in the twilight zone the evidential force of principle must be recognized. While courts will go a long way in admitting expert testimony deduced from well recognized scientific principles or discoveries, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the popular field in which it belongs."

COURT CRITICISM OF DNA

In 1991, a California appellate court ruled in the *Axell* case that DNA evidence using the RFLP technique was admissible in a thorough decision that many felt would settle the issue in that state.⁸ Local crime laboratories went "on-line" with DNA testing procedures. However, one year later another appellate court in California looked at DNA testing using the RFLP technique and came to the opposite conclusion in the *Barney* case.⁹ The *Barney* court cited new, emerging scientific criticisms of DNA testing as the basis for its break from precedent. Subsequent decisions have considered the *Barney* decision as the binding precedent and no appellate court in California has approved the admissibility of DNA evidence since 1992.

The California experience demonstrates that there are no guarantees when it comes to court treatment of DNA testing. The fields of molecular genetics and population genetics are very dynamic. Just as new techniques are constantly being developed, new and different criticisms of applying DNA techniques to forensics are being developed. The *Pierce* case in Ohio seems to preclude future admissibility challenges to DNA evidence, but so did the *Axell* case in California.

Thus, while there are reasons to be confident that DNA evidence from a new state-wide lab will be accepted by our courts, it would be naive to ignore the possibility that scientific criticisms could alter the legal landscape. With this in mind, the recent criticisms of DNA testing which have, in other states, stood in the way of judicial acceptance of such evidence, can be explored. In so doing, we also discuss the likelihood that such criticisms could stand in the way of acceptance of a new state-wide DNA lab in Ohio.

1. The statistical calculations used in conjunction with the RFLP technique are flawed. Defense expert witnesses have testified that the statistical calculations performed by DNA labs are flawed because the calculations ignore the possibility of ethnic population substructure. The substructure argument is described in great detail in Chapter 3 of the National Research Council's 1992 report, "DNA Technology in Forensic Science" (hereafter the "NRC Report"). The argument led the drafters of the NRC report to recommend a statistical formula that differs from that which is routinely used by forensic DNA labs. The substructure criticism has led some courts in other states to rule that RFLP test results are not admissible. The substructure argument was made in both *Pierce* and *Bond/Yee* and was found to be not persuasive in both cases. Both courts ruled that challenges to the accuracy of the statistical estimates were challenges that went to the weight of the evidence and not the admissibility. Significantly, both courts issued their decisions after the NRC Report was published and neither court was moved by the fact that the NRC Report recommended an approach different from that which was used in the case before it. There is no reason to believe that the current statistical criticisms of DNA evidence should be problematic for the admission of results from a new state-wide lab.

⁸ *People v. Axell*, 235 Cal. App. 3d 836 (Ct. App. 1991)

⁹ *People v. Barney*, 8 Cal. App. 4th 798 (Ct. App. 1992)

2. There is too great a risk of human error in performing forensic DNA analysis. The NRC Report addresses the subject of human error in the laboratory and recommends a rigid program of proficiency testing for all labs performing forensic DNA analysis. Defense experts have testified that the risk of human error is great and they have cited to reported errors in proficiency tests administered to certain private labs. Once again, the *Pierce* and the *Bonds/Yee* cases address this argument and both cases find it unpersuasive. Both cases hold that criticisms of this nature (even if they were factually valid) are matters of weight and not admissibility.
3. There is a lack of laboratory standards for DNA testing. Defense experts have argued that a lack of standards precludes a finding that the procedures employed by any particular lab are generally accepted. The RFLP and the PCR techniques are standard techniques, but the fact is that different labs may employ the techniques in slightly different manners. The NRC Report discusses the lack of standards at great length and makes recommendations in this regard. The lack of standards was argued in *Pierce* and did not block court acceptance of DNA evidence.
4. There is a need to certify DNA laboratories. Critics of DNA testing have called for the certification or accreditation of laboratories performing forensic DNA analysis. The NRC Report also addresses this subject and recommends the implementation of mandatory accreditation of forensic DNA testing laboratories. Such a program has not yet been implemented. The accreditation issue has been raised in DNA cases and no court has ever ruled DNA inadmissible because a lab was not accredited. The successful rebuttal of the accreditation argument has been due to the fact that there is no generally recognized accreditation program, and not due to a perception that accreditation is unimportant. If an accreditation program is implemented and recognized as significant, any lab that is not accredited will have its test results subject to court challenge.
5. The DNA testing procedures used in the genetic disease research cannot be performed reliably on forensic samples. Defense experts have testified that DNA testing procedures are not reliable when performed on forensic samples which may be degraded or contaminated. This argument has been rebutted in court by citation to numerous published studies which show that DNA testing procedures can be reliably performed on samples which have been subjected to a wide variety of environmental insults. These studies show, in general, that while contamination may in some cases destroy the ability of tests to yield meaningful results, it does not lead to false positive results—that is, results which falsely connect individuals to crime scene samples. Both the OTA and the NRC reports address the contamination issue and both conclude that DNA testing procedures can be performed on forensic samples. The argument was raised in *Bonds/Yee* and found to be unpersuasive.

THE CREATION OF A DATABASE

The ability to create a database from the DNA test results is one of the advantages of technology. The undeniably high rate of recidivism associated with violent offenders leads to the database's use as a benefit to law enforcement. Not unlike the ability to compare fingerprints using the Automated Fingerprint Identification System (AFIS), the DNA test results from a crime scene could be digitized and compared with a digitized record of DNA specimens held in the database.

By expanding on the ability to identify individuals, DNA examination techniques are expected to be sufficiently advanced in a few years to supply information about a suspect. With the ability to identify a previously unknown suspect, it is no wonder law enforcement agencies are in favor of establishing DNA databases.

The first legislation was enacted in King County, Washington, in 1988. The ordinance required all convicted sex offenders to submit a blood specimen. Not long after, Arizona, California, Colorado, Florida, Illinois, Iowa, Minnesota, Nevada, South Dakota, Virginia and other states adopted similar legislation. Virginia law not only authorized the establishment of a repository, but allowed for the exchange of the results of the DNA tests conducted in Virginia.¹⁰

The law enforcement agencies currently collect and maintain records on individuals (photographs, fingerprints, etc.). Since there is no court decision dealing with the constitutional right of a subject's DNA test results being maintained, two cases regarding fingerprint databases can be used for discussion. In the case of *Cissell v. Brostron*, the court declined an individual's privacy interests in the return of fingerprints against the benefit that law enforcement agencies receive from maintenance of a fingerprint database.¹¹ Additionally, in *Galegher v. Marion County Victim's Advocate Program Inc.*, the court rejected the subject's claim of privacy and held that the police department could retain prints of an individual who has been arrested but not convicted. In both cases the court held that the benefit outweighed the risk, provided the prints were not disseminated to the public nor made available for inspection. This common sense argument should support the retaining of DNA database results for use by law enforcement.

Finally, there is the question of who has access to the information stored in the database. As a legal matter there is little question that DNA test results can be used for legitimate law enforcement purposes. With adequate state and federal statutes authorizing the sharing of fingerprint information, an assumption can be made that the expansion of shared information stored in a DNA database would also be authorized.¹²

¹⁰ 583 N.Y. 52d, 643, 659 (Albany County, Ct, 1988)

¹¹ 352 U.S., 432, 436 (1957)

¹² 387 U.S., 523, 536-537 (1987)

LEGISLATIVE RECOMMENDATIONS

The Advisory Council unanimously supports this model legislation and offers it to the General Assembly as a guide to establishing Ohio's DNA laboratory and database. Its legislative recommendations are based on similar laws enacted in nineteen other states, as well as the Council members' diverse viewpoints and significant experience. The Council urges the General Assembly to consider promptly a similar bill that enables law enforcement to take full advantage of DNA's investigatory value.

The legislation has two central purposes. First, it provides enabling language so the State may establish a central DNA laboratory at the Attorney General's Bureau of Criminal Identification and Investigation. Second, the legislation creates a state-wide database of unknown offenders and unidentified victims to assist law enforcement on the federal, state, and local level to identify, detect, and exclude suspects in crimes. Additionally, a database of known criminal offenders' DNA profiles will be created to enable investigators to identify a suspect and quickly compare DNA information derived from crime scene evidence to the suspect's DNA profile in the database. Other purposes of the database include: developing a population database to support identification research, statistics, and protocols in forensic DNA, and assisting in the identification of human remains from natural disasters, as well as identifying living/missing persons.

Creation of a database must begin with legislation that provides for blood samples to be taken from each individual convicted of specific crimes. When considering categories of offenders, the Council included offenses that are likely to produce biological evidence of the offender at a crime scene and enable investigators to identify a suspect and quickly compare DNA information derived from crime scene evidence to the DNA profiles in the database.

While some states have elected to mandate blood samples from all convicted felons for use in the database, states with more limited resources have enacted legislation to require those convicted of sex-related crimes to give a sample. Since the rate of recidivism is well documented in sexual assault crimes, and the nature of the crime is often a function of personality and is therefore committed in a serial manner, the Council chose to prioritize sex offenders to ensure entry into the database. Blood samples from other qualifying offenders will be collected and stored, and entered into the database as resources allow.

Securing the blood sample is based on a court order following conviction upon being found delinquent of any of the specified offenses. The Council agreed that juveniles should be included in the database not only because of the staggering number of sex-related and violent crimes committed by them, but also because of the high recidivistic nature of sex-related crimes. Those imprisoned on the effective date of the statute will have their blood drawn before release from the institution, but the samples will generally be drawn at intake for administrative ease.

The collection and processing of the DNA sample are as important as the analysis, and the legislation includes a standardized collection procedure that applies to all criminal justice agencies within the state. Under the model legislation, the State provides standardized kits, which include blood-drawing instruments, sample storage tubes, labels, and packaging. The use of such a kit ensures that samples going into the database are taken in the same manner and with the same consistency. Furthermore, only trained personnel are authorized to draw the blood.

With the large number of possible specimens to be analyzed, the legislation allows the state to contract with a third party vendor. Should the state decide to contract, the vendor must perform DNA typing according to the standards established by the BCI&I. If the vendor fails to follow those standards, the State may cancel the contract.

In order to protect the confidential nature of the information contained in the database, access to the information is limited to law enforcement agencies and defendants for criminal defense purposes. As an additional safeguard, the legislation imposes criminal penalties upon any individual who, by virtue of his/her employment, unlawfully uses information contained in the DNA database.

The Council understands the importance of establishing consistent proficiency and disclosure standards governing the methods of testing and obtaining information from the database. It also, however, acknowledges that qualified scientists should develop the appropriate testing procedures and standards depending upon the most recent scientific information available. Consequently, this Council's model legislation does not include specific standards that may be out-of-date by the time the legislation is in effect, but instead allows the BCI&I to establish and promulgate rules maintaining the laboratory's standards.

Finally, the Council's model legislation includes provisions that seek to maintain citizens' civil liberties. For instance, the state may not collect or store samples for the purpose of obtaining information about physical characteristics, traits, or predispositions for disease, and if a defendant's conviction is reversed his/her DNA sample is expunged from the record. The Council is also aware of the current protections afforded defendants through the Ohio Revised Code and is confident that those will also apply with respect to DNA testing.

The Council seeks to provide the General Assembly with a guide to establishing a DNA state-wide laboratory and database. It hopes that this report and model legislation provides a basis upon which the legislature can illustrate Ohio's commitment to providing law enforcement with the tools needed to combat crime and secure the safety of Ohio's families.

AN ACT RELATING TO THE ESTABLISHMENT OF A STATE DNA LABORATORY AND DATABASE

SECTION 1. Terms and Definitions.

- A) **CODIS:** Originally an acronym for the Combined DNA Index System, now understood to mean the FBI's national DNA identification index system, which allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories.
- B) **Designated State Agency:** The agency or organization within state government responsible for the policy management and administration of the state-level DNA identification record system to support law enforcement and for liaison with the FBI regarding the state's participation in CODIS.
- C) **DNA:** Deoxyribonucleic acid. DNA is located in the nucleus of cells and encodes genetic information that is the basis of human heredity and forensic identification.
- D) **DNA Record:** DNA identification information stored in the state DNA database or CODIS for the purposes of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the objective form of the DNA analysis test (e.g., numerical representation of DNA fragment lengths, digital image of autoradiographs, discrete allele assignment numbers, etc.) of a DNA sample. The DNA record is comprised of the characteristics of a DNA sample that are of value in establishing the identity of individuals.
- E) **DNA Sample/Specimen:** DNA is found in any nucleated cell of the body. Blood is a rich source of DNA, although only white blood cells contain DNA. While other biological materials may also qualify as DNA samples, blood is preferred because of the ease of collection, storage, and processing for DNA typing. In addition, blood is relatively simple to collect and involves a generally acceptable degree of infringed privacy for affected individuals.
- F) **FBI:** Federal Bureau of Investigation.
- G) **State DNA Database:** The state-level DNA identification record system to support law enforcement, which is administered by the designated state agency and provides DNA records to the FBI for storage and maintenance in CODIS. The state DNA database system is the collective capability provided by computer software and procedures administered by a designated state agency to store and maintain DNA records related to forensic casework, convicted offenders required to provide a DNA sample under state law, and anonymous DNA records used for research, quality control, etc.
- H) **BCI&I:** The Office of the Attorney General's Bureau of Criminal Identification and Investigation. The BCI&I is responsible for the policy management and administering of the state DNA identification record system to support law enforcement and for liaison with the FBI regarding the State's participation in CODIS.

SECTION 2. Authority to Establish a State DNA Laboratory and Database.

A) The Superintendent of the BCI&I is authorized to be the Designated State Agency to:

- 1) establish a state DNA laboratory to perform DNA analysis and make data available to law enforcement officials in connection with criminal investigations in which biological specimens have been recovered, and
- 2) establish a database of DNA identification records for convicted criminals as set forth in subsections (3)(B) and (C) and crime scene specimens and
- 3) establish population (comparison) database.

The BCI&I may also contract with other qualified public or private laboratories to conduct that analysis provided all quality assurance and privacy requirements are followed by the public or private laboratory.

B) Purpose of Database. The principal purpose of the state DNA database is to assist Federal, state, and local law enforcement agencies in the putative identification, detection, or exclusion of individuals who are subjects of the investigation or prosecution of violent crimes or other crimes in which biological evidence is recovered from the crime scene(s).

C) Secondary purposes of the state DNA database are: (1) to support development of a population statistics database, when personal identifying information is removed, (2) to support identification research and protocol development of forensic DNA analysis methods, (3) to identify unknown dead persons, disaster victims or missing persons, or (4) for quality control purposes.

SECTION 3. Sample/Specimen Collection for DNA Analysis Upon Sentencing.

A) Any person convicted in this state on or after the effective date of this statute of any of the crimes listed in subsection (C) shall upon sentencing be required by court order to submit a DNA sample upon intake to jail or prison or juvenile detention facility. In addition, every person convicted on or after the effective date of this statute of any of these crimes but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence. A person who has been convicted and incarcerated as a result of conviction of one or more of these crimes prior to the effective date of this statute, shall have a DNA sample drawn before release from the incarceration facility.

B) Whenever a juvenile court adjudicates a person to be a delinquent child for having committed an act which, if done by an adult would constitute a felony offense listed in subsection (C), the court shall order the child to submit to the drawing of a DNA sample in the manner provided by subsection (D).

C) This section applies to any person convicted of one of the following offenses:

- 1) 2903.01 Aggravated Murder
- 2) 2903.02 Murder

- 3) 2905.01 Kidnapping
- 4) 2905.04 Child Stealing
- 5) 2907.02 Rape
- 6) 2907.03 Sexual Battery
- 7) 2907.04 Corruption of a Minor (Felony level only)
- 8) 2907.05 Gross Sexual Imposition
- 9) 2907.12 Felonious Sexual Penetration
- 10) 2911.11 Aggravated Burglary

D) The withdrawal of blood for purposes of this section shall be performed in a medically approved manner and only under the direction of a physician, registered nurse, licensed practical nurse, duly licensed clinical laboratory technician, or other qualified medical practitioner. No civil liability shall attach to any person authorized to withdraw blood as provided in this section as a result of the act of withdrawing blood from any person submitting thereto, provided the blood was withdrawn according to recognized medical procedures. However, no person shall be relieved from liability for negligence in the withdrawing of any blood sample.

E) The state of Ohio shall provide the specimen vials, mailing tubes, labels, postage, and instructions for the collection of blood specimens. The specimens shall thereafter be forwarded to the BCI&I in accordance with the rules promulgated by the BCI&I regarding DNA identification testing. The samples shall be transported to the BCI&I not more than 15 days following withdrawal.

F) The analysis of all samples obtained from those convicted of all sex offenses included in subsection (C) shall be given priority in being entered into the state DNA database maintained by the BCI&I. Upon completion of the analysis and storage of the samples collected from those offenders convicted of any sex offense included in subsection (C), the BCI&I shall analyze and enter into the database all other samples obtained pursuant to this Section as resources allow.

G) The database system shall be limited to containing personal identification information, names, addresses, etc., only on individuals convicted of crimes specified in subsections (3)(B) and (C).

H) All DNA records and samples submitted to the BCI&I pursuant to this article shall be treated as confidential law enforcement materials.

I) Only DNA records that directly relate to the identification of individuals shall be collected and stored. These records shall not be used for any purpose other than to facilitate personal identification of an offender, provided that in appropriate circumstances such records may be used to identify potential victims of mass disasters or missing persons.

J) The BCI&I may charge a reasonable fee to search and provide a comparative analysis of DNA profiles in the database to any authorized law enforcement agency outside of the state of Ohio.

SECTION 4. Unauthorized Uses of DNA Database; Forensic Samples/Specimens; Penalties.

- A) Any person who, by virtue of employment, or official position, has possession of, or access to, forensic samples or individually identifiable DNA information contained in the State DNA Database and who knowingly misuses it in any manner (such as to disclose it to any person or agency not entitled to receive it) is guilty of a misdemeanor of the first degree.
- B) Any person who, without authorization, willfully obtains individually identifiable DNA information from the state DNA database is guilty of a misdemeanor of the first degree.

SECTION 5. Expungement.

A) A person whose DNA record has been included in the database pursuant to this chapter may request expungement on the grounds that the felony conviction on which the authority for including the DNA record was based, has been reversed and the case dismissed. The BCI&I shall expunge all identifiable information in the database pertaining to the person, with regard to that specific expungement and destroy all samples from the person upon receipt of:

- 1) A written request for expungement pursuant to this section and
- 2) A certified copy of the court order reversing and dismissing the particular conviction.

SECTION 6. Authorized Disclosure of DNA Records.

A) As the Designated State Agency, it shall be the duty of the BCI&I to receive DNA samples and to analyze, classify, and file the results of the DNA test and to make such information available:

- 1) To law enforcement agencies for identification purposes;
- 2) To the defendant for criminal defense purposes consistent with the criminal rules of evidence; or
- 3) For a population statistics database, identification research and protocol development, or quality control purposes.

The results of an analysis and comparison of the identification of the characteristic from two or more biological samples shall be made available directly to federal, state, and local law enforcement officers upon a request made in furtherance of any official investigation of any criminal offense. A request may be made by personal contact, mail, or electronic means. The name of the requester and the purpose for which the information is requested shall be maintained on file with the BCI&I.

B) The BCI&I may create a separate database comprised of profiles of DNA samples of persons whose identity is unknown. Nothing in this Section or Act shall prohibit the BCI&I

from sharing or otherwise disseminating the information in the database with law enforcement agencies within or outside the state.

SECTION 7. Promulgation of Rules and Procedures.

The BCI&I shall develop administrative rules to maintain, preserve, and analyze human biological specimens for DNA. The BCI&I shall also establish rules governing the methods of obtaining information from the database in accordance with this Act and procedures for verification of the identity and authority of the requester. The BCI&I shall specify the positions in that agency which require regular access to the database and sample submitted as a necessary function of the job.

SECTION 8. Funding.

Funding for the DNA laboratory and related database functions shall be a separate line item for the BCI&I budget to be calculated each biennium period.

LOGISTICAL IMPACT

Establishing DNA testing and comparison in Ohio will have significant effect on the law enforcement community. The first impact will allow for the detection and identification of individuals associated with specific crimes. Secondly, it will provide prosecutors with additional evidence to be presented at trial. Finally, it will allow for exclusion of the innocent accused of specific crimes.

The DNA Advisory Council has made recommendations as to which criminal offenses would require collection of a biological specimen. These specimen will be submitted for analysis and the results will be entered into the state DNA database. Below is a list of the recommended offenses for mandatory collection and the most current information regarding these offenses.

<u>Offense</u>	<u>CY Year'93 DRC Intake</u>	<u>1/1/94 DRC Census</u>	<u>FY '93 DYS Intake</u>	<u>6/1/93 DYS Census</u>
Rape	389	3,696	256	99
Felonious Sexual				
Penetration	75	233	37	5
Sexual Battery	212	376	39	8
Gross Sexual				
Imposition	460	625	416	78
Aggravated Murder	123	1,762	15	21
Murder	163	1,634	37	42
Kidnapping	66	574	31	7
Child Stealing	5	8	1	0
Aggravated				
Burglary	449	3,031	867	191
Corruption of a				
Minor (Felony)	134	170	1	1
<u>Total</u>	2,076	11,809	1,700	452

Note: DYS-Department of Youth Services
DRC-Department of Rehabilitation and Corrections
CY- Calendar Year
FY- Fiscal Year

TEN YEAR DNA SAMPLE TESTING

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
INTAKE	1,775	1,775	1,775	1,774	1,753	1,710	1,667	1,625	1,582	1,539
EXIT*	1,116	1,116	884	698	558	465	372	279	233	233
EXIT**	271	135	0	0	0	0	0	0	0	0
TOTAL	3,162	3,026	2,658	2,472	2,311	2,175	2,039	1,904	1,814	1,772

* Shock parole, parole, expiration of definite sentence

** Shock probation

CASEWORK

Ohio has approximately 6000 rapes and homicides reported annually, of which, approximately 4000 cases are submitted for laboratory examination. Twenty percent of these 4000 cases could qualify for DNA analysis. This equals approximately 800 cases per year. The DNA Advisory Council has determined, by inspection of other state DNA laboratories, a forensic scientist can analyze approximately 100 criminal cases per year.

DATABASE

The DNA Advisory Council has determined, by inspection of other state DNA laboratories, a forensic scientist can analyze approximately 600 samples per year. These specimens will come from convicted criminals who, by the nature of their offenses, will be required to submit a biological specimen. The number of scientists required to perform this function is directly related to the number of specimens submitted for input into the state DNA database.

SET-UP

The initial set-up for Ohio's DNA laboratory, like the casework and database sections, is directly related to the number of scientists needed to perform the analysis. Laboratory facilities are unlike normal office spaces; laboratories require additional plumbing, electrical, and ventilation equipment. By evaluating other laboratory facilities, the Council determined that each scientist requires approximately 600 square feet of laboratory and support space. The laboratory itself consists of areas reserved for analysis, storage, refrigeration of specimens, and administrative support. Additionally, the amount of equipment and supplies needed vary depending on the number of specimens to be analyzed.

Below is a matrix identifying the estimated set-up costs for Ohio's DNA laboratory based upon the number of specimens analyzed.

DNA SET-UP COSTS

# SAMPLES ANALYZED	# OF EXAMNR	SQ FT REQUIRED	CONSTRUCTION COST	EQUIPMENT	TOTAL COST
12,800	28	16,000	\$3,520,000	\$1,910,000	\$5,430,000
10,800	25	14,500	\$3,190,000	\$1,700,000	\$4,890,000
8,800	21	12,500	\$2,750,000	\$1,430,000	\$4,180,000
6,800	18	11,000	\$2,420,000	\$1,230,000	\$3,650,000
4,800	15	8,500	\$1,870,000	\$1,020,000	\$2,890,000
3,800	13	7,500	\$1,650,000	\$880,000	\$2,500,000
3,300	12	7,000	\$1,540,000	\$820,000	\$2,360,000

** Denotes the DNA Advisory Council's Recommendation pursuant to a study conducted projecting the number of cases requiring DNA analysis annually.

OPERATING COSTS

The operating costs for a DNA laboratory are, again, dependent upon the number of specimens analyzed. Included in the operating costs are the salaries and fringe benefits of the employees performing and supporting the DNA analysis, supplies necessary to conduct the testing, and maintenance.

Below is a matrix identifying the estimated annual operating costs for Ohio's DNA laboratory based upon the number of specimens analyzed.

DNA ANNUAL OPERATING COSTS

# SAMPLES ANALYZED	# OF EXAMNR	PERSONAL SERVICES	SUPPLIES	MAINTENANCE	TOTAL COST
12,800	28	\$1,689,100	\$467,000	\$133,000	\$2,289,100
10,800	25	\$1,536,700	\$417,000	\$121,000	\$2,074,700
8,800	21	\$1,333,500	\$350,000	\$105,000	\$1,788,500
6,800	18	\$1,181,100	\$300,000	\$93,000	\$1,574,100
** 4,800	15	\$965,200	\$250,000	\$76,000	\$1,291,200
3,800	13	\$863,600	\$217,000	\$68,000	\$1,148,600
3,300	12	\$812,800	\$200,000	\$64,000	\$1,076,800

** Denotes the DNA Advisory Council's Recommendation pursuant to a study conducted projecting the number of cases requiring DNA analysis annually.

LABORATORY CONSTRUCTION

The cost of constructing a laboratory is approximately \$220 per square foot. Each examiner should be allotted 500 square feet of work area. The Council suggests that space for storage and the corresponding security equipment be allotted. The lab could become a revenue producing facility by providing on-site training to outside laboratories. Additionally, the lab will reduce travel costs, out-of-state costs and fees related to training. Finally, by providing training for in-house workers, as well as for examiners from other labs, the BCI&I would facilitate the standardization of the DNA testing methodology across the state.

EQUIPMENT

Equipment and furniture costs will also be based on the workload, number of workers, and size of the laboratory.

ATTACHMENT A

NUCLEIC ACID

The theoretical principle that organisms carry or transmit to their offspring hereditary elements, or genes, was formulated in 1865 by Gregor Mendel. Genes, the units of hereditary transmission in all organisms from human beings to bacteria and viruses, are composed of forms of nucleic acid.¹³ Each molecule of nucleic acid is a compound consisting of phosphoric acid, a sugar, and nitrogen containing bases (purines and pyrimidines). The two types of nucleic acids are RNA (Ribonucleic Acid) and DNA (Deoxyribonucleic Acid), each containing, as a backbone, repeated chains of the sugar and phosphate components. The bases that are usually contained in each molecule are similar. RNA bases consist of Adenine (A), Cytosine (C), Guanine (G), and Uracil (U). In the DNA molecule, the Uracil is replaced by Thymine (T).¹⁴ One less atom of oxygen in the sugar of DNA, generates the name of Deoxyribose. The specific pairing of A's with T's and G's with C's form the rungs of the double strand DNA helix that was discovered in 1953 by Francis Crick and James Watson of Cambridge University in England.¹⁵ DNA has a structure which resembles a twisted ladder or a spiral staircase. The rungs of the ladder are hydrogen bonds which connect chemical bases on either side of the ladder to each other.

DNA, or deoxyribonucleic acid, is the molecule found in the nucleus of all nucleated cells in all living organisms. Non-nucleated cells such as red blood cells in humans are not suitable for forensic DNA testing. DNA is contained in packets of information called chromosomes (twenty-three pairs in humans), with one set of chromosomes coming from the egg and the other from the sperm.

DIFFERENCES IN DNA

Historically, the thrust of research and applications in human genetics focused on medical uses, especially in the areas of diagnosis and genetic diseases. In recent years, the forensic analysis of biological samples has played an increasing role in providing evidence in criminal proceedings.

¹³ U.S. Congress, Office of Technology Assessment, Genetic Witness: Forensic Use of DNA Tests, OTA-BA-438 (Washington, D.C.: U.S. Gov't Printing Office, July 1990)

¹⁴ America Encyclopedia, Nucleic Acid.

¹⁵ Leom Jaroff, "Happy Birthday Double Helix," Time, March 15, 1993, p 70.

With the increasing interest in the forensic application of DNA testing, many non-technical terms have come into common use for describing DNA technologies. The use of terminology such as "Genetic fingerprinting", "DNA fingerprinting", "DNA prints", "DNA identification", "DNA typing", and "DNA profiling" have added confusion as to the significance and meaning of the results of forensic DNA testing. Although the uniqueness of DNA in individuals (except identical twins) is recognized, there is still debate in the scientific community as to the ability of specific forensic DNA tests to demonstrate a positive identification of an individual from a biological sample.

Forensic DNA testing has come into more frequent use in recent years as investigators attempt to associate biological evidence such as blood or semen from a crime scene to an individual, in most cases a suspect or crime victim. It is like conventional serological testing, or blood enzyme testing, in that the ultimate result of a test is reported by stating that the crime scene sample is either consistent with or inconsistent with having originated from a particular person or suspect. The key difference between DNA profiling and conventional serology is in the discriminating power of the test. As a result of conventional serological testing, the result might be stated something like, "the blood group factors and enzymes detected in the crime scene samples are the same as those found in the suspect's blood standard. This combination of factors and enzymes is found in approximately three percent of the Caucasian population." With DNA testing, the result of an analysis of the same samples might reveal, "the DNA patterns in the crime scene sample and the suspect's blood standard match and it is expected that this DNA pattern is found in one in one million individuals in the Caucasian population."

PERSON TO PERSON

Each DNA molecule consists of approximately 3.3 billion base pairs. However, only a fraction of these 3.3 billion base pairs differ between two individuals (approximately 3 million on average).¹⁶ When conducting DNA analysis, it is the challenge of the forensic scientist to distinguish or detect some of these differences. Although it is not possible to analyze the entire DNA molecule, current technology allows for an analysis of segments of DNA.

Locus (from the Latin for place) is the "address" that scientists attempt to locate and assign to a specific gene or DNA sequence. Chromosomes contain many loci occupied by different genes or DNA sequences. For example, the locus for the gene responsible for sickle cell anemia is on chromosome eleven, and the locus for cystic fibrosis is on chromosome seven. Except for sex chromosomes, normal individuals have two copies of each given gene or sequence at a particular locus because human chromosomes come in pairs, one copy inherited from the mother and one copy from the father.¹⁷ At any particular locus, a genetic variance called an allele may occur. An individual could have two identical or two different alleles at the locus.

¹⁶ Office of Technology Assessment, GW, Note 1, p.42.

¹⁷ Office of Technology Assessment, GW, Note 1, p.42.

Homozygous is the term used when the alleles are the same and heterozygous is the term used when the alleles differ. Many different alleles can exist for the same locus within a population. When multiple alleles exist at a particular locus, the genetic condition is referred to as polymorphism. Polymorphism is the heart of forensic applications of DNA profiling.

There may be fifty to one hundred different alleles that could exist at the same address or locus in humans. The functions of the specific DNA tests are to detect these highly polymorphic loci and to distinguish among these alleles. If one were to draw an analogy between a strand of DNA and a reel of movie film, the DNA analysis involves the examination of a small segment (frame) rather than the entire genetic code (movie). Persons who are close relations may share the same allele or alleles for a given locus, but DNA, in theory, is unique to each individual, such that no two persons, other than identical twins, will have identical DNA. For the purposes of forensic examination using DNA testing, an examination of several loci is necessary to determine differences or matches.

DNA is constant in all nucleated cells, such that DNA extracted from an individual's blood, semen, saliva, tissue, or hair root will not vary depending on the particular cell from which the DNA is extracted, and will never vary throughout the lifetime of an individual.

DNA METHODOLOGY

RESTRICTION FRAGMENT LENGTH POLYMORPHISM - RFLP

The technique most used in forensic DNA today to isolate and analyze the segments of DNA used for identification purposes is called the "Restriction Fragment Length Polymorphism," or RFLP technique. RFLP is a laboratory technique that has been used for a number of years in disease research, medical diagnostic settings, and paternity cases. The technique detects differences in the relative size of polymorphic "Variable Numbers of Tandem Repeats" (VNTRs). VNTRs are regions or sequences of repeated nucleotide units which vary in number from individual to individual in human DNA. It has been demonstrated that these VNTR vary a great deal from individual to individual, with the difference being in the relative size (or length) of the fragments. These VNTRs account for the different size fragments which can be measured by RFLP analysis. Certain genes have also been discovered within the area of human DNA where variation is found that tends to differ from individual to individual in terms of the particular sequence of the base pairs of the genes. To conduct RFLP analysis, the specimen size requires approximately fifty to one hundred nanograms of DNA to test, approximately the weight of a hair.¹⁸ The technique, in forensic context, involves the following steps (see Illustration 3):

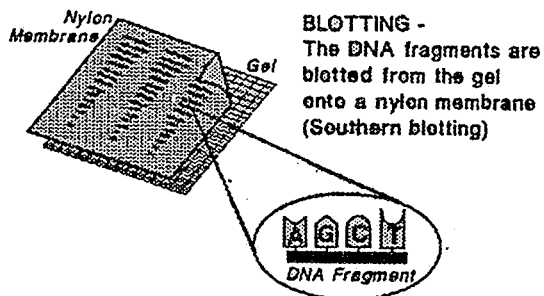
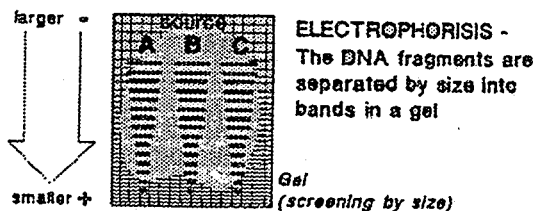
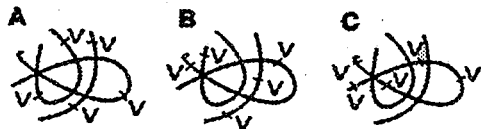
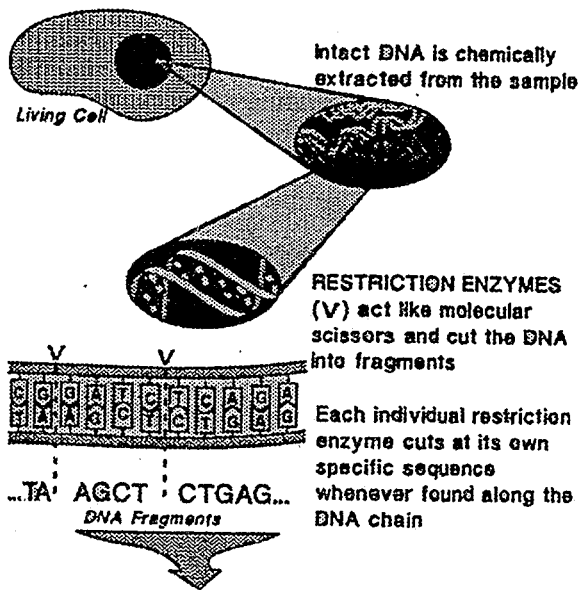
First, the DNA material is extracted from the specimen, after which it is exposed to a restriction enzyme (RE) to cut the DNA. The RE cuts the DNA at specific nucleotide sequences (restriction site). When the sequences are cut, the DNA fragments are mixed. The DNA pattern that is revealed depends on the enzyme and probes used. Laboratories that use different enzymes generate patterns that may not be comparable with those of other laboratories.

The next step in the process is called electrophoresis. Electrophoresis is a process that separates the DNA fragments by length along an agarose gel slab. The DNA fragments which carry a negative charge are placed at the negative electrode end (origin) of a gel across which an electric current is passed. The larger fragments travel more slowly than the smaller ones toward the positive electrode side of the gel. This allows for separation of the DNA fragments into a distinct pattern with the larger fragments located closer to its origin and the smaller ones nearer to the positive electrode end of the gel.

¹⁸ U. S. Dept. of Justice, Forensic DNA Analysis: Issues, June, 1991, NCJ-128567, p. 5.

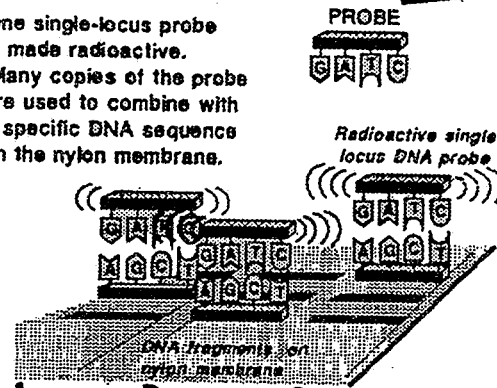
Illustration 3

Detailed Schematic of Single-locus Probe RFLP Analysis



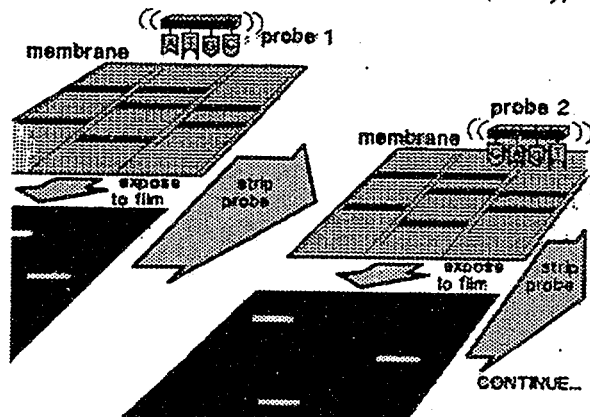
Single-locus probes with varied sequences exist and key with areas of specific DNA.

One single-locus probe is made radioactive. Many copies of the probe are used to combine with a specific DNA sequence on the nylon membrane.



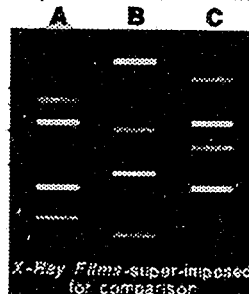
X-ray film is placed over the membrane to detect and image the radioactive probe pattern.

Using different probes in sequence demonstrates whether the specimen sample matches the suspect type.



SINGLE-LOCUS PROBE PATTERN

Suspect Victim Evidence



When using single-locus probe analysis one must use different probes to obtain identity.

SOURCE: Office of Technology Assessment, 1990.

The next step is called "Southern Blotting". Southern Blotting transfers the separated bands of DNA to a nylon membrane. Double strand fragments are unzipped into single strand fragments using a reagent or a chemical transfer solution. By separating the strands, the A (Adenine), T (Thymine), C (Cytosine) and G (Guanine) bases are exposed. The exposed blocks are then treated with a radioactive DNA probe. Since each base will only bind with its complimentary base, A with T and C with G, a single strand probe of sequence ATGCA will seek and attach itself to a complimentary fragment of sequence TAACGT on the target DNA strand. This attachment is known as hybridization.

Exposing the membrane to x-ray film creates a permanent visual record of the DNA pattern, or the location on the membrane where the probe found its complimentary sequence in the sample lanes (the location on the membrane will tell you the approximate size of the VNTR gene in the sample of DNA, because the DNA has been sorted by size). The band pattern, or barcode looking result, is recorded on an "autoradiograph" or "autorad". Once the band patterns are made visible on the autorad, it is necessary to visually compare those from crime scene samples to the patterns from potential source individuals.

The process is repeated with another probe which will detect variation at another site on the DNA. For example, the first probe may detect variation at a location on the fourth chromosome, the second probe may detect variation at a location on the seventeenth; the more probes used, the more powerful the test result. If the samples match, the final step is to calculate a statistical estimate of rareness of the particular DNA pattern of alleles by looking at a population study to see how frequently that particular pattern occurs.

Although the RFLP technique is a standard DNA testing procedure, it may be used in various ways in different laboratories. For example while most labs doing forensic analysis use the Hae III restriction enzyme during the RFLP procedure, others may use a different enzyme for cutting the DNA into fragments. Labs may also use different DNA markers or probes during testing. These may be either single locus probes or multi-locus probes. The single locus probes look at one location on the DNA, creating a DNA pattern consisting of one or two alleles per sample, depending on whether an individual inherited two different forms of the gene from his parents or whether the individual inherited the same form from both of his parents, whereas multilocus probes look at several locations on the DNA. Single locus probes are predominantly used in forensics, but there are different probes used depending on which location on the DNA is being analyzed. The use of different restriction enzymes and probes by different laboratories result in the generation of DNA banding patterns which can not be compared to one another. The development of standard testing protocol for forensic labs is therefore desirable. Labs may also use different data bases and statistical formulae to calculate the significance of matching DNA patterns.

POLYMERASE CHAIN REACTION - PCR

The other technology used for forensic DNA analysis is Polymerase Chain Reaction (PCR). The process uses an amplification technique in which segments of the DNA where polymorphisms have been discovered are replicated or cloned until they are of sufficient size for analysis. A PCR test requires only a minute amount of biological material (less than what is needed for RFLP testing). PCR testing may be conducted when a sample is damaged by the environment or biologically degraded by chemical impurities. It is the procedure of choice if samples are not large enough or are unsuitable for RFLP testing.

One of the more frequently applied PCR procedures is that used for typing alleles at the DQ Alpha locus (see Illustration 4). A commercial test kit developed by the Cetus Corporation¹⁹ allows for the distinction of six DQ Alpha alleles. The alleles are defined by four types, DQ Alpha 1, DQ Alpha 2, DQ Alpha 3 and DQ Alpha 4. DQ Alpha 1 and DQ Alpha 4 are further divided into subtypes DQ Alpha 1.1, DQ Alpha 1.2, DQ Alpha 1.3, DQ Alpha 4.1, DQ Alpha 4.2, and DQ Alpha 4.3. Twenty-one genotypes are defined by these six alleles. These different genotypes allow for discrimination of from one in three persons when dealing with common combinations to one in one thousand persons when dealing with the rarest combination frequencies. The benefit of PCR-DQ Alpha is it can be done much more quickly and with smaller samples than the RFLP technique. RFLP looks for differences at several loci, leading to strong statements about whether a particular individual is the likely source of biological evidence, whereas PCR-DQ Alpha testing looks at only one loci. PCR-DQ Alpha testing, therefore, cannot provide the degree of discrimination as that provided by the RFLP technique.

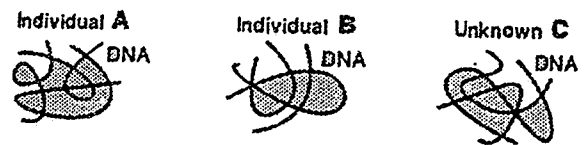
Another PCR based technique presently in use utilizes a commercial kit to simultaneously test for multiple markers called polymarkers (PM). The polymarkers represent five separate, independently inherited genetic loci and provide for maximal discrimination power without increased sample consumption.

Other PCR based techniques are also currently under development for forensic use. One such technique that has recently given promising results is the analysis of Short Tandem Repeats (STRs). These STRs are a special class of VNTRs and are comprised of four to six bases. They have also been found to be highly polymorphic which gives STR-PCR considerable potential for future use.

¹⁹ Amplitype User Guide, Version 2 (Emeryville, CA Cetus Corp., 1990)

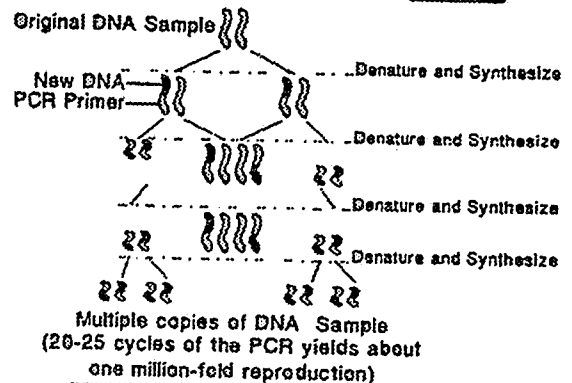
Another procedure undergoing considerable research is the amplification fragment length polymorphism (AMPFLP) technique, which detects certain fragment length polymorphisms using a polymerase chain reaction. Rather than measuring the fragment length as the RFLP technique does, this process amplifies only certain known fragments. The multiple copies can then be detected with selected probes. This allows detection of smaller samples of DNA and yields discrimination power greater than PCR-DQ Alpha testing but less than RFLP.

The Polymerase Chain Reaction Illustration 4



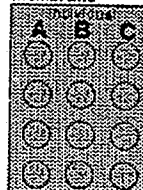
AMPLIFICATION (Molecular Photocopying of DNA)

Each sample is amplified manually or in a machine.

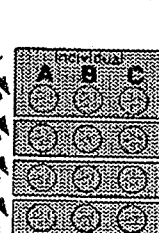


DOT BLOT

Membranes

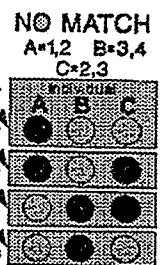


The amplified DNA is spotted onto a membrane



The membrane is challenged with a DNA probe that has a key sequence specific to an HLA DQ-Alpha Allele.

The membrane is washed and floated in a color developer



There are 21 different types at HLA DQ Alpha Locus (most frequent is 1 in 5, least 1 in 800).

SOURCE: Office of Technology Assessment, 1990.

ATTACHMENT B

OFFENSES:

ATTACHMENT B-1
COMPARATIVE LEGISLATION:

	AZ	CA	CO	FL	GA	HI	IL	IA	KY	LA	MT	MV	MO	NV	NC	OR	SD	VA	WA
Convictions	X	X			X	X	X		X	X	X	X	X		X			X	X
Sex Offenses	X	X			X		X			X		X	X	X	X	X			X
Violent Offenders		X				X							X		X	X			
Attempted Sex Offense											X	X							
Every Felon																		X	
Condition of Probation		X			X			X								X			

NOTE: This graph should not be used as a legal reference, due to the variations in state statutes. Some interpretations were made to accommodate the general categories. Please refer to Attachment C for full state statutes.

RECORDS:

ATTACHMENT B-2

	AZ	CA	CO	FL	GA	HI	IL	IA	KY	LA	MT	MV	MO	NV	NC	OR	SD	VA	WA
Juveniles												X				X			
Results Entered into Data Base		X		X	X	X			X						X	X		X	
Information Released Only to CRJ		X		X	X		X		X			X				X		X	
Records Subject to Public Record				X															
State Maintains Automated Identification System		X		X									X						
May Create a Separate Statistical Data Base					X				X									X	
Confidential/Not Public Record							X		X							X	X		
Data Exchange on Federal Level Compatible									X				X		X				
No Local May Establish or Operate Unless Compatible with State													X						X
Create Population Data Base															X	X			
CODIS															X				
Exonage					X				X				X			X		X	
Report Maintained by State	X	X			X		X			X	X	X	X	X				X	

NOTE: This graph should not be used as a legal reference, due to the variations in state statutes. Some interpretations were made to accommodate the general categories. Please refer to Attachment C for full state statutes.

COLLECTION:

ATTACHMENT B-3

	AZ	CA	CO	FL	GA	HI	IL	IA	IN	LA	MI	MN	MO	NV	NC	OR	SD	VA	WA
Blood Specimen				2	X	2	X	X		X	X		X	X	X	X	X		X
Saliva						X	X			X	X			X					
Medically Approved Manner Physician, RN, LN, Lab Tech.		X		X	X	X			X		X			X		X	X	X	
Collection Upon Arrest																X			
Collection on Intake to Detention Facility															X				
Prior to Discharge or Release		X					X						X		X		X	X	
Collected by Dept. of Corrections (Collector)									X			X				X		X	X
Withdrawn within 10 Days After Sentence							X												
Withdrawn within 30 Days Place of Detention					X														
Transported to Lab within 15 Days					X													X	
Arresting Agency Arrange Collection							X				X	X				X	X		
No Civil Liability if Withdrawn in Accordance w/Medcl. Procedure									X						X	X	X	X	
Liability if Negligent															X			X	

NOTE: This graph should not be used as a legal reference, due to the variations in state statutes. Some interpretations were made to accommodate the general categories. Please refer to Attachment C for full state statutes.

MISCELLANEOUS:

ATTACHMENT B-4

	AZ	CA	CO	FL	GA	HI	IL	IA	IN	LA	MI	MN	MO	NV	NC	OR	SD	VA	WA
Department Reimburses Agency for Withdrawal of Blood																X	X		
Charge a Fee					X													X	
Contract for Services					X		X												
Supplies/Vials Provided by State		X		X			X				X						X		
Establishes Rules & Protocol		X		X	X		X	X				X	X		X	X	X	X	X
Biological Relatives									X										
Used for Missing Persons									X						X				
Evidence May be Admissible if Wrong Protocol Used for Collectn.																X			
Penalty for Unlawful Dissemi- nating, Receiving, Attempt to		X			X				X									X	

NOTE: This graph should not be used as a legal reference, due to the variations in state statutes. Some interpretations were made to accommodate the general categories. Please refer to Attachment C for full state statutes.

ARIZONA REVISED STATUTES

TITLE 31. PRISONS AND PRISONERS

CHAPTER 2. STATE PRISON

ARTICLE 6. DEOXYRIBONUCLEIC ACID IDENTIFICATION

A.R.S. @ 31-281 (1993)

31-281. Deoxyribonucleic acid identification; sexual offenses

A. A person convicted of a sexual offense as provided in section 13-1403, 13-1404, 13-1405, 13-1406, 13-1410, 13-1411, 13-1412 or 13-3608 shall submit to deoxyribonucleic acid testing for law enforcement identification purposes. Reports of the tests shall be maintained by the department of public safety.

B. A person who is tested pursuant to subsection A of this section and who has sufficient financial ability shall pay for the costs of the testing. The cost to the person shall not exceed five hundred dollars. All monies received pursuant to this subsection shall be transmitted to the state treasurer for deposit in the Arizona deoxyribonucleic acid identification system fund established by section 41-2419.

HISTORY: Last year in which legislation affected this section: 1993

DEERING'S CALIFORNIA CODES ANNOTATED

PENAL CODE

PART 1. Crimes and Punishments

TITLE 9. Of Crimes Against the Person Involving Sexual Assault, and Crimes Against Public Decency and Good Morals

290.2. Requirement that sex offender provide blood specimens and saliva sample prior to discharge, parole, or release; Analysis filing; release of information; violations; penalty

(a) Any person who is required to register under Section 290 because of the commission of, or the attempt to commit, a felony offense specified in Section 290, or who is convicted of murder in violation of Section 190 or 190.05, or who is convicted of a felony offense of assault or battery in violation of Section 217.1, 220, 241.1, 243, 243.1, 243.3, 243.4, 243.7, 244, 245, 245.2, 245.3, or 245.5, and who is discharged or paroled from a state prison, county jail, or any institution under the jurisdiction of the Department of the Youth Authority where he or she was confined, or is granted probation, or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, the granting of probation, or release, be required to provide two specimens of blood and a saliva sample to that institution or, in the case of a person granted probation, to a person and at a location within the county designated for testing. The county shall make every effort to utilize one location for testing a person under this section.

The withdrawal of blood shall be performed in a medically approved manner. Only a physician, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist, or clinical laboratory bioanalyst may withdraw the blood specimens for purposes of this section.

(b) The Department of Justice shall provide all blood specimen vials, mailing tubes, labels, and instructions for the collection of the blood specimens and saliva samples. The specimens and samples shall thereafter be forwarded to the Department of Justice for analysis of deoxyribonucleic acid (DNA) and other genetic typing analysis at the department's DNA laboratory. The Department of Justice may provide samples from these specimens to local public DNA laboratories for law enforcement purposes provided that the other privacy provisions of this section are followed by the local laboratory.

The Department of Justice shall perform DNA analysis and other genetic typing analysis only for law enforcement purposes.

(c) Additional specimens may be collected pursuant to subdivision (a) and sent to a local public DNA laboratory for DNA analysis and other genetic typing analysis if each of the following conditions are met:

(1) The methodologies and procedures used by the local public DNA laboratory for analysis are the same as those established by the Department of Justice pursuant to subdivision (j).

(2) Only tests of value to law enforcement for identification purposes are performed and a copy of the results of the analysis are sent to the Department of Justice.

(3) All provisions concerning privacy and security enumerated in this section are followed.

(4) The local public DNA laboratory assumes all costs of securing the sample and provides appropriate tubes, labels, and instructions necessary to secure the samples.

(d) The Department of Justice DNA laboratory shall perform genetic typing only for those markers having value for law enforcement purposes.

For purposes of this subdivision, "marker" shall have the meaning generally ascribed to it by members of the scientific community experienced in the use of DNA technology.

(e) The DNA and other genetic typing information shall be filed with the offender's file maintained by the Sex Registration Unit of the Department of Justice or in a computerized data bank system, and shall not be included in the state summary criminal history information.

The computerized data bank system shall be limited to containing information only on individuals convicted of crimes specified in subdivision (a), or evidence accumulated from crime scenes during ongoing investigations and believed to have been left by a person suspected of having committed a violent felony specified in subdivision (c) of Section 667.5 or an offense specified in Section 290. Evidence accumulated pursuant to this provision from any crime scene with respect to a particular person shall be stricken from the data bank when it is determined that the person is no longer a suspect in the case.

(f) The DNA and other genetic typing information shall be released only to law enforcement agencies and district attorneys' offices, at the request of the agency, except as specified in this section. Dissemination of this information to law enforcement agencies and district attorneys' offices outside the state shall be done in conformity with the provisions of this section.

(g) Any person who knowingly discloses DNA or other genetic typing information developed pursuant to this section to unauthorized individuals or agencies, or for other than law enforcement purposes, shall be guilty of a misdemeanor.

(h) Furnishing DNA or other genetic typing information to defense counsel for criminal defense purposes in compliance with discovery is not a violation of this section.

(i) It is not a violation of this section to disseminate statistical or research information obtained from the offender's file or the computerized data bank system, provided that the subject of the file is not identified and cannot be identified from the information disclosed. It is also not a violation of this section to include information obtained from a file as follows: (1) in a transcript or record of a judicial proceeding, or (2) in any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(j) The Department of Justice shall make public the methodology and procedures to be used in its DNA program prior to the commencement of DNA testing in its laboratories. The Department of Justice shall review and consider on an ongoing basis the findings and results of any peer review and validation studies submitted to the department by members of the relevant scientific community experienced in the use of DNA technology.

HISTORY:

Added Stats 1983 ch 700 @

Amended Stats 1985 ch 1474 @ 3. Amended Stats 1988 ch 291 sec 1. Amended Stats 1989 ch 1304 sec 1.5.

Amended Stats 1993 ch 457 @ 1 (AB 201).

NOTES:

AMENDMENTS:

1985 Amendment: Added "or any institution under the jurisdiction of the Youth Authority" in subd (a).

1988 Amendment: (1) Amended the first sentence of subd (a) by adding (a) ", county jail," after "a state prison"; (b) "granted probation, or is" after "confined, or is"; (c) "the granting of probation" after "discharge, parole,,"; and (d) "or, in the case of a person granted probation, to a person and at a location within the county designated for testing" at the end of the sentence; and (2) added the second sentence of subd (a).

1989 Amendment: In addition to making technical changes, (1) added ", or who is convicted of murder in violation of Section 190 or 190.05, or who is convicted of a felony offense of assault or battery in violation of Section 217.1, 220, 241.1, 243, 243.1, 243.3, 243.4, 243.7, 244, 245, 245.2, 245.3, or 245.5, and" in the first sentence of subd (a); (2) amended subd (b) by (a) substituting "for analysis of deoxyribonucleic acid (DNA) and other genetic typing analysis at the department's DNA laboratory" for "criminalistics laboratory in Sacramento for analysis and categorizing into blood groupings" at the end of the first paragraph; and (b) adding the second paragraph; (3) substituted subds (c) and (d) for former subds (c) and (d) which read: "(c) The blood grouping analysis information shall be filed with the offender's file maintained by the Sex Registration Unit of the Department of Justice, and shall not be included in the state summary criminal history information. "(d) The blood grouping analysis information shall be released only to law enforcement agencies and district attorneys' offices, at the request of the agency."; and (4) added subds (e)-(i).

1993 Amendment: (1) Amended the first paragraph of subd (a) by (a) substituting "Department of the Youth Authority" for "Youth Authority"; and (b) deleting "the provisions of" after "sex offender under"; (2) added the third sentence of the first paragraph of subd (b); (3) added subd (c); and (4) redesignated former subds (c)-(i) to be subds (d)-(j).

NOTE-

Stats 1989 ch 1304 provides:

SECTION 1. It is the intent of the Legislature that the amendments made to Section 290.2 of the Penal Code by this act shall not, in any way, affect the admissibility of DNA evidence at trial.

DEERING'S CALIFORNIA CODES ANNOTATED

PENAL CODE

PART 1. Crimes and Punishments

TITLE 9. Of Crimes Against the Person Involving Sexual Assault, and Crimes Against Public Decency and Good Morals

CHAPTER 5. Bigamy, Incest, and the Crime Against Nature

Cal Pen Code @ 290.3 (1994)

@ 290.3. Fines on first and subsequent convictions of sex offenses; Use of funds for Department of Justice Sexual Habitual Offender Program

Every person convicted of a violation of any offense listed in subdivision (a) of Section 290, in addition to any imprisonment or fine, or both, imposed for violation of the underlying offense, shall be punished by a fine of one hundred dollars (\$ 100) upon the first conviction or a fine of two hundred dollars (\$ 200) upon the second and each subsequent conviction, unless the court determines that the defendant does not have the ability to pay the fine.

Out of the moneys deposited with the county treasurer pursuant to this section, there shall be transferred, once a month, to the Controller for deposit in the General Fund an amount equal to all fines collected during the preceding month upon conviction of, or upon the forfeiture of bail by, any person arrested for, or convicted of, committing an offense listed in Section 290. Moneys deposited in the General Fund pursuant to this section shall be deposited in the Department of Justice Sexual Habitual Offender Fund created pursuant to paragraph (5) of subdivision (b) of Section 11170 and, when appropriated by the Legislature, shall be used for the purposes of Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4 for the purpose of monitoring, apprehending, and prosecuting sexual habitual offenders.

HISTORY

Added Stats 1988 ch 1134 @ 1. Amended Stats 1992 ch 1338 @ 1 (SB 1184). Amended Stats 1993 ch 589 @ 110 (AB 2211).

NOTES:

AMENDMENTS:

1992 Amendment: In addition to making additional changes, amended the second paragraph by (1) adding "committing" after "or convicted of,"; (2) adding "be deposited in the Department of Justice Sexual Habitual Offender Fund created pursuant to paragraph (5) of subdivision (b) of Section 11170 and" after "this section shall"; (3) substituting ", shall" for "and until July 1, 1994," after "by the Legislature"; (4) adding "Chapter 9.5 (commencing with Section 13885) and" after "the purpose of"; and (5) adding "for the purpose of monitoring, apprehending, and prosecuting sexual habitual offenders" after "of Part 4".

EDITOR'S NOTES:

In amending this section in Stats 1992 ch 1338 @ 1, the Legislature inadvertently omitted the period at the end of the section.

PAGE 3

Cal Pen Code (@ 290.3 (1994)

NOTES OF DECISIONS

Upon convicting defendant for having violated Pen. Code, § 220 (assault with intent to commit rape), the trial court properly imposed a \$ d 100 fine under Pen. Code, § 290.3 (fines for convictions of sex offenders), despite the court's failure to determine whether defendant had the ability to pay the fine, since, under Pen. Code, § 290.3, the burden is on the defendant to timely raise the issue of inability to pay, and defendant had failed to do so. Although defendant had been informed through his probation report that the probation officer was recommending the imposition of the fine, defendant raised no objection, nor did he make any attempt to show he did not have the ability to pay the fine. Defendant's failure to object or present contrary evidence waived the right to complain on appeal. *People v McMahan* (1992, Cal App 5th Dist) 3 Cal App 4th 740.

COLORADO REVISED STATUTES

TITLE 17. CORRECTIONS DEPARTMENT OF CORRECTIONS PAROLE AND PROBATION ARTICLE 2. CORRECTIONAL SERVICES PART 1. DIVISION OF ADULT SERVICES - PAROLE C.R.S. 17-2-103.5 (1993)

17-2-103.5. Revocation proceedings - parolee arrested for certain offenses

(1) Notwithstanding any provision of section 17-2-103, a parole officer shall file a complaint seeking revocation of the parole of any parolee who is found in possession of a deadly weapon as defined in section 18-1-901, C.R.S., or any parolee arrested and charged with a felony, a crime of violence as defined in section 16-1-104 (8.5), C.R.S., a misdemeanor assault involving a deadly weapon or resulting in bodily injury to the victim, or sexual assault in the third degree as defined in section 18-3-404, C.R.S. A hearing relating to such revocation shall be held, unless the administrative law judge or board member is advised that a criminal charge is still pending and no technical violations are alleged, or where the parolee does not request revocation, in which case the hearing shall be delayed until a disposition concerning the criminal charge is reached.

(2) If the hearing officer or board member conducting the hearing pursuant to subsection (1) of this section finds the parolee guilty of the conduct charged but decides against revoking the parole of the parolee, the record of such hearing shall be reviewed within fifteen days of the decision by two members of the board, exclusive of the board member who conducted the hearing, who may overturn the decision and order the parole to be revoked.

FLORIDA STATUTES 1993

TITLE XLVII CRIMINAL PROCEDURE AND CORRECTIONS CHAPTER 943 DEPARTMENT OF LAW ENFORCEMENT

943.325 Blood specimen testing for DNA analysis

(1)(a) Any person convicted in this state on or after January 1, 1990, of any offense or attempted offense defined in chapter 794, relating to sexual battery, or of any offense or attempted offense under chapter 800, relating to lewd and lascivious conduct, shall, upon conviction, be required to submit two specimens of blood to a Department of Law Enforcement designated testing facility as directed by the department.

(b) Any person convicted in this state on or after July 1, 1993, of any offense or attempted offense described in s. 782.04, relating to murder, shall, upon conviction, be required to submit two specimens of blood to a testing facility as directed by the department.

(2) The withdrawal of blood for purposes of this section shall be performed in a medically approved manner and only under the direction of a physician, registered nurse, licensed practical nurse, or duly licensed clinical laboratory technician.

(3) The Department of Law Enforcement shall provide the specimen vials, mailing tubes, labels, and instructions for the collection of blood specimens. The specimens shall thereafter be forwarded to the designated testing facility for analysis to determine genetic markers and characteristics for the purpose of individual identification of the person submitting the sample.

(4) The analysis, when completed, shall be entered into the automated data base maintained by the Department of Law Enforcement for such purpose, and shall not be included in the state central criminal justice information repository.

(5) The results of the analysis or information derived from the analysis or the comparison of analytic results shall be released only to criminal justice agencies as defined in s. 943.045(10), at the request of the agency. Documentation associated with the analysis shall be exempt from s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(6) The Department of Law Enforcement and the statewide criminal laboratory analysis system shall establish, implement, and maintain a statewide automated personal identification system capable of, but not limited to, classifying, matching, and storing analyses of DNA (deoxyribonucleic acid) and other biological molecules. The system shall be available to all criminal justice agencies.

(7) The Department of Law Enforcement shall:

(a) Receive, process, and store blood samples and the data derived there from furnished pursuant to subsection (1).

(b) Collect, process, maintain, and disseminate information and records with due

regard to the privacy interests of individuals.

(c) Strive to maintain or disseminate only accurate and complete records.

(d) Adopt rules prescribing the proper procedure for state and local law enforcement and correctional agencies to collect and submit blood samples pursuant to this section.

HISTORY:

s. 1, ch. 89-335; s. 9, ch. 93-204.

FLORIDA STATUTES 1993

TITLE XLVII CRIMINAL PROCEDURE AND CORRECTIONS CHAPTER 943 DEPARTMENT OF LAW ENFORCEMENT Fla. Stat. @ 943.35 (1993)

943.35 Funding for existing laboratories.

- (1) The following existing criminal analysis laboratories are eligible for receipt of state funding:
 - (a) The Broward County Sheriff's Crime Laboratory;
 - (b) The Metro-Dade Police Department Crime Laboratory;
 - (c) The Indian River Crime Laboratory;
 - (d) The Monroe County Sheriff's Crime Laboratory;
 - (e) The Palm Beach County Crime Laboratory; and
 - (f) The Pinellas County Forensic Laboratory.
- (2) The state shall provide funding not to exceed 75 percent of the actual operating cost of such laboratories previously enumerated. The state shall base the funding only on that portion of the current year's actual operating budget, as approved by the county commission or public unit authorized to grant fiscal appropriations, which is from local contributions. The funds provided by the state to each laboratory shall be applied toward the current year's actual operating budget to arrive at an authorized percentage of state funding for the fiscal year. At the close of the fiscal year the state funding shall be compared to the actual laboratory expenditures. Any state funds provided in excess of the authorized percentage shall be returned to the state. The following functions are not to be considered laboratory operations for the purpose of appropriating state funds:
 - (a) Identification photography;
 - (b) Identification of fingerprints, other than latent;
 - (c) Polygraph;
 - (d) Electronic surveillance; and
 - (e) Medical examiners.

HISTORY:

s. 6, ch. 74-362; s. 2, ch. 84-22; s. 2, ch. 87-159; s. 3, ch. 88-324.

FLORIDA ADVANCE LEGISLATIVE SERVICE

FLORIDA 13TH LEGISLATURE — SECOND REGULAR SESSION (1994)

CHAPTER 94-90

HOUSE BILL NO. 291

SYNOPSIS: An act relating to public records; reenacting and amending section 760.40(2)(a), F.S., which provides an exemption from public records requirements for DNA analysis results hold by public entities; revising the exemption and saving it from repeal; reenacting and amending section 943.325(5) and (7)(b), F.S., which provides an exemption from public records requirements for DNA analysis results and comparison of analytic results of specimens submitted to the Department of Law Enforcement; revising the exemption and saving it from repeal; providing findings of public necessity; reenacting and amending section 741.29(2), F.S., which requires the exclusion of victims and witnesses statements and active investigative materials from police domestic violence reports that are forwarded to domestic violence centers; restating and continuing that exclusion; reenacting and amending section 760.50(5), F.S., which provides an exemption from public records requirements for medical information hold by a public employer; revising the exemption and saving it from repeal; reenacting and amending section 796.08, F.S., which provides an exemption from public records requirements for test results for sexually transmissible diseases and HIV relating to a person who injures an officer, firefighter, paramedic, or emergency medical technician; revising the exemption and saving it from repeal; reenacting and amending section 951.27(1) and (2), F.S., which provides an exemption from public records requirements for blood test results of inmates; revising the exemption and saving it from repeal; reenacting and amending section 960.003(1), (3), (4), and (6), F.S., which provides an exemption from public records requirements for test results of persons convicted or charged with certain offenses; revising the exemption and saving it from repeal; providing for future review and repeal; providing a finding of public necessity; providing an effective date.

NOTICE:

[A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED <A]

[D> Text within these symbols is deleted <D]

Be It Enacted by the Legislature of the State of Florida:

[*1] Section 1. Notwithstanding the October 1, 1994, repeal specified in section 119.14(3)(a), Florida Statutes, paragraph (a) of subsection (2) of section 760.40, Florida Statutes, is reenacted and amended to read:

760.40 Genetic testing; informed consent; confidentiality. —

(2)(a) Except for purposes of criminal prosecution, except [A> FOR PURPOSES OF DETERMINING PATERNITY <A] as provided in section 742.12(1), and except [A> FOR PURPOSES OF ACQUIRING SPECIMENS FROM PERSONS CONVICTED OF CERTAIN OFFENSES <A] [D> as<D] provided in section 943.325, DNA analysis may be performed only with the informed consent of the person to be tested, and the records [D>, <D] results [D>, and findings <D] of [A> SUCH <A] DNA analysis [D> covered by this paragraph <D], whether held by a public or private entity, are the exclusive property of the person tested, are confidential, and may not be disclosed without the consent of the person tested. Such [A> INFORMATION <A] records [D>, results, and

findings <D> held by a public entity [A> IS <A] [D> are <D] exempt from [A> THE PROVISIONS OF <A] section 119.07(1) [A> AND SECTION 24(A), ART. I OF THE STATE CONSTITUTION <A] . This exemption is subject to the Open Government Sunset Review Act in accordance with section 119.14.

[*2] Section 2. The Legislature finds that exempting from the public records law the results of a DNA analysis is a public necessity in that harm caused by releasing such information outweighs any public benefit derived from the release. Analysis of the DNA structure or gene composition is performed on a consensual basis generally for the purpose of determining whether an individual might be predisposed to a particular disease. Should this information be known, it is possible that the individual could be discriminated against when seeking financial assistance, such as a mortgage, loan or credit, or when applying for employment or an educational opportunity. Such personal, sensitive information should be afforded the same protection as that of any other medical information in that it should not be released without the consent of the person on which the test was performed.

[*3] Section 3. Notwithstanding the October 1, 1994, repeal specified in section 119.14(3)(a), Florida Statutes, subsection (5) and paragraph (b) of subsection (7) of section 943.325, Florida Statutes, are reenacted and amended to read;

943.325 Blood specimen testing for DNA analysis. -

(5) The results of [A> A DNA <A] the analysis [A> AND <A] [D> or information derived from the analysis or <D] the comparison of analytic results shall be released only to criminal justice agencies as defined in section 943.045(10), at the request of the agency. [A> OTHERWISE, SUCH INFORMATION IS CONFIDENTIAL AND <A] [D> Documentation associated with the analysis shall be <D] exempt from [A> THE PROVISIONS OF <A] section 119.07(1) [A> AND SECTION 24(A), ART. I OF THE STATE CONSTITUTION <A] . This exemption is subject to the Open Government Sunset Review Act in accordance with section 119.14.

(7) The Department of Law Enforcement shall:

(b) Collect, process, maintain, and disseminate information and records [A> PURSUANT TO THIS SECTION <A] [D> with due regard to the privacy interests of individuals <D] .

[*4] Section 4. The Legislature finds that exempting from the public records law the results of a DNA analysis and any comparison of the analytic results is a public necessity in that the harm of releasing such information outweighs any public benefit derived from releasing such information.

Uncontrolled dissemination of the results could result in unscientific or unscrupulous matches which could be used to challenge or confuse investigative or judicial findings, thus hindering the effective and efficient administration of the Department of Law Enforcement in completing criminal investigations. In addition, removal of the protection afforded this information could jeopardize the department's access to the national DNA analysis database, thus hindering the effective and efficient administration of future investigations. The department provides the comparison of the results to those criminal justice agencies which have a need to know such information in order to conduct criminal investigations.

[*5] Section 5. Notwithstanding the October 1, 1994, repeal specified in section 119.14(3)(a), Florida Statutes, subsection (2) of section 741.29, Florida Statutes, is reenacted and amended to read:

741.29 Domestic violence; investigation of incidents; notice to victims of legal rights and remedies; reporting.-

(2) When a law enforcement officer investigates an allegation that an incident of domestic violence, as defined in section 741.30, has occurred, the officer shall handle the incident pursuant to the arrest policy provided in section 901.15(7)(a), and as developed in accordance with subsections (3), (4), and (5). Whether or not an arrest is made, the officer shall make a written police report of the alleged incident indicating, as prescribed by the Florida Department of Law Enforcement, that the alleged offense was an incident of domestic violence. Such report shall include a description of physical injuries observed, if any, and the reasons if no arrest was made, and shall indicate that a copy of the legal rights and remedies notice was given to the victim. Whenever possible, the law enforcement officer shall obtain a written statement from the victim and witnesses concerning the alleged domestic violence. The officer shall submit the report to the supervisor or other person to whom the employer's rules or policies require reports of similar allegations of criminal activity to be made. The law enforcement officer's supervisor shall, without charge, send a copy of the initial police report, which excludes victim/witness statements or other materials [A] THAT ARE [A] [D] deemed to be a [D] part of an active criminal investigation [A] AND ARE EXEMPT FROM DISCLOSURE UNDER CHAPTER 119 [A] [D] as defined in section 119.07(3)(d) [D], to the nearest locally certified domestic violence center within 24 hours of the agency's receipt of the report.

[*6] Section 6. Notwithstanding the October 1, 1994, repeal specified in section 119.14(3)(a), Florida Statutes, subsection (5) of section 760.50, Florida Statutes, is reenacted and amended to read:

760.50 Discrimination on the basis of acquired immune deficiency syndrome, acquired immune deficiency syndrome related complex, and human immunodeficiency virus prohibited.

(5) Every employer who provides or administers health insurance benefits or life insurance benefits to its employees shall [D] develop and implement procedures to [D] maintain the confidentiality of [D] all records and [D] information [D] in its possession [D] relating to the medical condition or status of any person covered by [A] SUCH [A] [D] the health [D] insurance benefits [D] or life insurance benefits which it provides or administers [D] . [A] SUCH INFORMATION IN THE POSSESSION OF A PUBLIC EMPLOYER IS EXEMPT FROM THE PROVISIONS OF SECTION 119.07(1) AND SECTION 24(A), ART. I OF THE STATE CONSTITUTION. THIS EXEMPTION IS SUBJECT TO THE OPEN GOVERNMENT SUNSET REVIEW ACT IN ACCORDANCE WITH SECTION 119.14. [A] An employer shall be liable in damages to any person damaged by its failure to implement such a procedure.

[*7] Section 7. Notwithstanding the October 1, 1994, repeal specified in section 119.14(3)(a), Florida Statutes, section 796.08, Florida Statutes, is reenacted and amended to read:

796.08 Screening for [A]HIV AND[A] sexually transmissible diseases; providing penalties.

(1)(a) For the purposes of this section, "sexually transmissible disease" means a bacterial, viral, fungal, or parasitic disease, determined by rule of the Department of Health and Rehabilitative Services to be sexually transmissible, a threat to the public health and welfare, and a disease for which a legitimate public interest is served by providing for regulation and treatment.

(b) In considering which diseases are designated as sexually transmissible diseases, the Department of Health and Rehabilitative Services shall consider such diseases as chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/acute salpingitis, syphilis, and human immunodeficiency virus infection for designation and shall consider the recommendations and classifications of the Centers for Disease Control and other nationally recognized authorities. Not all diseases that are sexually transmissible need be designated for purposes of this section.

(2) A person arrested under section 796.07 may request screening for a sexually transmissible disease under direction of the Department of Health and Rehabilitative Services and, if infected, shall submit to appropriate treatment and counseling. A person who requests screening for a sexually transmissible disease under this subsection must pay any costs associated with such screening.

(3) A person convicted under section 796.07 of prostitution or procuring another to commit prostitution must undergo screening for a sexually transmissible disease, including, but not limited to, screening to detect exposure to the human immunodeficiency virus, under direction of the Department of Health and Rehabilitative Services. If the person is infected, he or she must submit to treatment and counseling prior to release from probation, community control, or incarceration. Notwithstanding the provisions of section 384.29, the results of tests conducted pursuant to this subsection shall be made available by the Department of Health and Rehabilitative Services to the offender, medical personnel, appropriate state agencies, state attorneys, and courts of appropriate jurisdiction in need of such information in order to enforce the provisions of this chapter.

(4) A person who commits prostitution or procures another for prostitution and who, prior to the commission of such crime, had tested positive for a sexually transmissible disease other than human immunodeficiency virus infection and a know or had been informed that he or she had tested positive for such sexually transmissible disease and could possibly communicate such disease to another person through sexual activity commits a misdemeanor of the first degree, punishable as provided in section 775.082 or section 775.083. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime of prostitution or procurement of prostitution.

(5) A person who commits prostitution or procures another for prostitution by engaging in sexual activity in a manner likely to transmit the human immunodeficiency virus and who, prior to the commission of such crime, had tested positive for human immunodeficiency virus and knew or had been informed that he or she had tested positive for human immunodeficiency virus and could possibly communicate such disease to another person through sexual activity commits criminal transmission of HIV, a felony of the third degree, punishable as provided in section 775.082, section 775.083, section 775.084, or section 775.0877(7). A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime of prostitution or procurement of prostitution.

(6)(a) The Department of Health and Rehabilitative Services or its authorized representatives may examine or cause to be examined any person or inmate who injures an officer as defined in section 943.10(14), a firefighter, or a paramedic or emergency medical technician acting within the scope of employment. Evidence of injury and a statement by a licensed physician that the nature of the injury is such as to result in the transmission of a sexually transmissible disease constitutes probable cause for issuance of a warrant by a court of competent jurisdiction.

(b) The results of any test authorized by this subsection [A] SHALL BE RELEASED [D] are exempt from the requirements of section 384.29 solely for the purpose of releasing the results to the injured employee after a licensed physician documents in the medical records of the injured employee that the information is medically necessary to determine the course of treatment for the injured employee [D]. [A] OTHERWISE, SUCH TEST RESULTS ARE CONFIDENTIAL AND EXEMPT FROM THE PROVISIONS OF SECTION 119.07(1) AND SECTION 24(A) ART. I OF THE STATE CONSTITUTION, THIS EXEMPTION IS SUB ACT TO THE OPEN GOVERNMENT SUNSET REVIEW ACT IN ACCORDANCE WITH SECTION 119.14. [A]

(c) [A] ANY [A] [D] A [D] person who receives the results of an HIV test pursuant to this subsection shall maintain the confidentiality of [A] SUCH TEST RESULTS AND THE IDENTITIES OF [A] the person [A] ON WHOM THE TEST WAS PERFORMED AND [A] [D] who injured [D] the officer, firefighter, paramedic, or emergency medical technician. Anyone who violates this provision commits a misdemeanor of the first degree, punishable as provided in section 775.082 or section 775.083. [D] The identities of the person who is the source of the injury and the injured officer; firefighter; paramedic; or emergency medical technician are confidential and exempt from the provisions of section 119.07(1): This exemption is subject to the Open Government Sunset Review Act in accordance with section 119.14. [D]

[*8] Section 8. Notwithstanding the October 1, 1994, repeal specified in section 119.14(3)(a), Florida Statutes, subsections (1) and (2) of section 951.27, Florida Statutes, are reenacted and amended to read:

951.27 Blood tests of inmates. —

(1) Each county and each municipal detention facility shall have a written procedure developed, in consultation with the facility medical provider, establishing conditions under which an inmate will be tested for infectious disease, including human immunodeficiency virus pursuant to 9.775.0877, which procedure is consistent with guidelines of the Centers for Disease Control and recommendations of the Correctional Medical Authority. It is not unlawful for the person receiving the test results to divulge the test results to the sheriff or chief correctional officer. [D] However; such information is exempt from the provisions of sections 119.81 and 119.07. [D]

(2) [A] EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, [A] serologic blood test results obtained pursuant to subsection (1) are confidential [A] AND EXEMPT FROM THE PROVISIONS OF SECTION 119.07(1) AND SECTION 24(A), ART. I OF THE STATE CONSTITUTION. THIS EXEMPTION IS SUBJECT TO THE OPEN GOVERNMENT SUNSET REVIEW ACT IN ACCORDANCE WITH SECTION 119.14. HOWEVER, SUCH RESULTS MAY BE PROVIDED TO [A] [D] except they may be shared with [D] employees or officers of the sheriff or chief correctional officer who are responsible for the custody and care of the affected inmate and have a need to know such information, and as provided in sections 775.0877 and

960.003. In addition, upon request of the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, the results of any HIV test performed on an inmate who has been arrested for any sexual offense involving oral, anal, or vaginal penetration by, or union with, the sexual organ of another shall be disclosed to the victim or the victim's legal guardian, or to the parent or legal guardian of the victim if the victim is a minor. In such cases, the county or municipal detention facility shall furnish the text results to the Department of Health and Rehabilitative Services, which is responsible for disclosing the results to public health agencies as provided in section 775.0877 and to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, as provided in section 960.003(3). [D> No person to whom the results of a test have been disclosed under this section may disclose the test results to another person not authorized under this section. <D]

[*9] Section 9. Notwithstanding the October 1, 1994, repeal specified in section 119.14(3)(a), Florida Statutes, subsections (1), (3), (4), and (6) of section 960.003, Florida Statutes, are reenacted and amended to read:

960.003 Human immunodeficiency virus testing for persons charged with or alleged by petition for delinquency to have committed certain offenses; disclosure of results to victims. —

(1) LEGISLATIVE INTENT. — The Legislature finds that a victim of a criminal offense which involves the transmission of body fluids is entitled to know at the earliest possible opportunity whether the person charged with or alleged by petition for delinquency to have committed the offense has tested positive for human immunodeficiency virus (HIV) infection. The Legislature finds that to deny victims access to HIV test results causes unnecessary mental anguish in persons who have already suffered trauma. The Legislature further finds that since medical science now recognizes that early diagnosis is a critical factor in the treatment of HIV infection, both the victim and the person charged with or alleged by petition for delinquency to have committed the offense benefit from prompt disclosure of [A> HIV <A] test results. [D> The Legislature finds that HIV test results can be discussed to the victim of a criminal offense which involves the transmission of body fluids while confidentiality is protected in other respects. <D]

(3) DISCLOSURE OF RESULTS. -

- (a) The results of the test shall be disclosed, under the direction of the Department of Health and Rehabilitative Services, to the person charged with or alleged by petition for delinquency to have committed [A> OR TO THE PERSON CONVICTED OF OR ADJUDICATED DELINQUENT FOR ANY <A] [D> the <D] offense [A> ENUMERATED IN SECTION 775.0877(1)(A)-(1), WHICH INVOLVES THE TRANSMISSION OF BODY FLUIDS FROM ONE PERSON TO ANOTHER <A] , and, upon request, to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, and to public health agencies pursuant to section 775.0877. If the alleged offender is a juvenile, the test results shall also be disclosed to the parent or guardian. [A> OTHERWISE, HIV TEST RESULTS OBTAINED PURSUANT TO THIS SECTION ARE CONFIDENTIAL AND EXEMPT FROM THE PROVISIONS OF SECTION 119.07(1) AND SECTION 24(A), ART. OF THE STATE CONSTITUTION AND <A] [D> The test results <D] shall not be disclosed to any other person except as expressly authorized by law or court order. [A> THIS EXEMPTION IS SUBJECT TO THE OPEN GOVERNMENT SUNSET REVIEW ACT IN ACCORDANCE WITH SECTION 119.14. <A]
- (b) At the time that the results are disclosed to the victim or the victim's legal guardian, or to the

parent or legal guardian of a victim if the victim is a minor, the same immediate opportunity for face-to-face counseling which must be made available under section 381.004(3)(e) to those who undergo HIV testing shall also be afforded to the victim or the victim's legal guardian, or to the parent or legal guardian of the victim if the victim is a minor. [D> The Department of Health and Rehabilitative Services is responsible for ensuring that test results are disclosed in accordance with the forms of this subsection. <D]

(4) POSTCONVICTION TESTING. —If, for any reason, the testing requested under subsection (2) has not been undertaken, then upon request of the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, the court shall order the offender to undergo HIV testing following conviction or delinquency adjudication. The testing shall be performed under the direction of the Department of Health and Rehabilitative Services, and the results shall be disclosed in accordance with the provisions of subsection (3). [D> The test results shall not be disclosed to any other person except as expressly authorized by law or court order. <D]

(6) TESTING DURING INCARCERATION, DETENTION, OR PLACEMENT; DISCLOSURE. - In any case in which a person convicted of or adjudicated delinquent for an offense described in subsection (2) has not been tested under subsection (2), but undergoes HIV testing during his incarceration, detention, or placement, the results of the initial HIV testing shall be disclosed [A> IN ACCORDANCE WITH THE PROVISIONS..OF SUBSECTION (3) <A] [D> to the victim or the victim's legal guardian, or to the parent or legal guardian of the victim if the victim is a minor, upon request <D] . Except as otherwise requested by the victim or the victim's legal guardian, or the parent or guardian of the victim if the victim is a minor, if the initial test is conducted within the first year of the imprisonment, detention, or placement, the request for disclosure shall be considered a standing request for any subsequent HIV test results obtained within 1 year after the initial HIV test performed, and need not be repeated for each test administration. Where the inmate or juvenile offender has previously been tested pursuant to subsection (2) the request for disclosure under this subsection shall be considered a standing request for subsequent HIV results conducted within 1 year of the test performed pursuant to subsection (2).

If the HIV testing is performed by an agency other than the Department of Health and Rehabilitative Services, that agency shall be responsible for forwarding the test results to the Department of Health and Rehabilitative Services for disclosure [D> to the victim or the victim's loyal guardian; or the parent or legal guardian of the victim if the victim is a minor, <D] in accordance with [A> THE PROVISIONS OF <A] subsection (3). This subsection shall not be limited to results of HIV tests administered subsequent to June 27, 1990, but shall also apply to the results of all HIV tents performed on inmates convicted of or juvenile offenders adjudicated delinquent for sex offenses as described in subsection (2) during their incarceration, detention, or placement prior to June 27, 1990. [D> The test results shall not be disclosed to any other person except as expressly authorized by law or court order. <D]

[*10] Section 10. The Legislature finds that exempting test results of certain infectious diseases, including HIV and sexually transmissible diseases, is a public necessity in that harm caused by releasing such information outweighs any public benefit derived from releasing such information. Information relating to such test results is of a sensitive and personal nature which could be embarrassing to the individual. Such information could also be used to discriminate against the individual to which the text results pertain.

[*11] Section 11. This act shall take effect October 1, 1994.

HISTORY:

Approved by the governor: April 1, 1994

Filed in the Office of the Secretary of State March 31, 1994

SPONSOR:

Boyd

GEORGIA ADVANCE LEGISLATIVE SERVICE

1992 REGULAR SESSION

SYNOPSIS: A BILL TO BE ENTITLED AN ACT

To amend Chapter 4 of Title 24 of the Official Code of Georgia Annotated, relating to proof in general, so as to provide for blood samples for DNA analysis upon conviction of certain sex offenses; to provide the procedures for the withdrawal of blood samples; to provide the procedures for conducting DNA analysis of blood samples; to provide for a DNA data bank exchange system; to provide the penalties for any unauthorized uses of the DNA data bank and forensic samples; to provide for expungement of records; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA

[*1] Section 1. Chapter 4 of Title 24 of the Official Code of Georgia Annotated, relating to proof in general, is amended by adding a new Article 4 to read as follows:

"ARTICLE 4

24-4-60. Any person convicted of a criminal offense defined in Code Section 16-6-1, 16-6-2, 16-6-3, 16-6-4, 16-6-5, 16-6-5.1, 16-6-6, 16-6-7, or 16-6-22 shall have a sample of his or her blood taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. The analysis shall be performed by the Division of Forensic Sciences of the Georgia Bureau of Investigation. The division shall be authorized to contract with individuals or organizations for services to perform such analysis. The identification characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the bureau in a DNA data bank and shall be made available only as provided in Code Section 24-4-63.

24-4-61. (a) Each sample required pursuant to Code Section 24-4-60 from persons who are to be incarcerated shall be withdrawn within the first 30 days of incarceration at the receiving unit or at such other place as is designated by the Department of Corrections. The required samples from persons who are not sentenced to a term of confinement shall be withdrawn as a condition of probation at a time and place specified by the sentencing court. Only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, graduate laboratory technician, or phlebotomist shall withdraw any sample to be submitted for analysis. No civil liability shall attach to any person authorized to withdraw blood as provided in this article as a result of the act of withdrawing blood from any person submitting thereto, provided the blood was withdrawn according to recognized medical procedures. However, no person shall be relieved from liability for negligence in the withdrawing of any blood sample.

(b) Chemically clean sterile disposable needles and vacuum draw tubes shall be used for all samples. The tube shall be sealed and labeled with the subject's name, social security number, date of birth, race, and gender plus the name of the person collecting the sample and the date and place of collection. The tubes shall be secured to prevent tampering with the contents. The steps set forth in this subsection relating to the taking, handling, identification, and disposition of blood

samples are procedural and not substantive. Substantial compliance therewith shall be deemed to be sufficient. The samples shall be transported to the Division of Forensic Sciences not more than 15 days following withdrawal and shall be analyzed and stored in the DNA data bank in accordance with Code Section 24-4-62 and 24-4-63.

24-4-62. Whether or not the results of an analysis are to be included in the data bank, the bureau shall conduct the DNA analysis in accordance with procedures adopted by the bureau to determine identification characteristics specific to the individual whose sample is being analyzed. The director of the Georgia Bureau of Investigation or his designated representative shall complete and maintain on file a form indicating the name of the person whose sample is to be analyzed, the date and by whom the blood sample was received and examined, and a statement that the seal on the tube had not been broken or otherwise tampered with. The remainder of a blood sample submitted for analysis and inclusion in the data bank pursuant to Code Section 24-4-60 may be divided, labeled as provided for the original sample, and securely stored by the bureau in accordance with specific procedures of the bureau to ensure the integrity and confidentiality of the samples. All or part of the remainder of the sample may be used only to create a statistical data base provided no identifying information on the individual whose sample is being analyzed is included or for retesting by the bureau to validate or update the original analysis. A report of the results of a DNA analysis conducted by the bureau as authorized, including the identifying information, shall be made and maintained at the bureau. Except as specifically provided in this Code section and Code Section 24-4-63, the results of the analysis shall be securely stored and shall remain confidential.

24-4-63. (a) It shall be the duty of the bureau to receive blood samples and to analyze, classify, and file the results of DNA identification characteristics profiles of blood samples submitted pursuant to Code Section 24-4-60 and to make such information available as provided in this Code section. The results of an analysis and comparison of the identification of the characteristics from two or more biological samples shall be made available directly to federal, state, and local law enforcement officers upon a request made in furtherance of an official investigation of any criminal offense. A request may be made by personal contact, mail, or electronic means. The name of the requestor and the purpose for which the information is requested shall be maintained on file with the bureau.

(b) Upon his or her request, a copy of the request for search shall be furnished to any person identified and charged with an offense as the result of a search of information in the data bank. Only when a sample or DNA profile supplied by the requestor satisfactorily matches the requestor's profile in the data bank shall the existence of data in the data bank be confirmed or identifying information from the data bank be disseminated.

(c) The bureau shall develop procedures governing the methods of obtaining information from the data bank in accordance with this Code section and procedures for verification of the identity and authority of the requestor. The bureau shall specify the positions in that agency which require regular access to the data bank and sample submitted as a necessary function of the job.

(d) The bureau may create a separate statistical data base comprised of DNA profiles of blood samples of persons whose identity is unknown. Nothing in this Code section or Code Section 24-4-60 shall prohibit the bureau from sharing or otherwise disseminating the information

in the statistical data base with law enforcement or criminal justice agencies within or outside the state.

(e) The bureau may charge a reasonable fee to search and provide a comparative analysis of DNA profiles in the data bank to any authorized law enforcement agency outside of the state.

24-4-64. (a) Any person who, without authority, disseminates information contained in the data bank shall be guilty of a misdemeanor. Any person who disseminates, receives, or otherwise uses or attempts to so use information in the data bank, knowing that such dissemination, receipt, or use is for a purpose other than as authorized by law, shall be guilty of a misdemeanor of a high aggravated nature.

(b) Except as authorized by law, any person who, for purposes of having DNA analysis performed, obtains or attempts to obtain any sample submitted to the Division of Forensic Sciences for analysis shall be guilty of a felony.

24-4-65. A person whose DNA profile has been included in the data bank pursuant to this article may request that it be expunged on the grounds that the felony conviction on which the authority for including his DNA profile was based has been reversed and the case dismissed. The bureau shall purge all records and identifiable information in the data bank pertaining to the person and destroy all samples from the person upon receipt of a written request that such data be expunged, pursuant to this Code section, and a certified copy of the court order reversing and dismissing the conviction."

[*2] Section 2. All laws and parts of laws in conflict with this Act are repealed.

SPONSOR: Senators Dawkins of the 45th, Taylor of the 12th and Robinson of the 16th.

HAWAII ADVANCE LEGISLATIVE SERVICE

THE SENATE
SIXTEENTH LEGISLATURE, 1991
ACT 231

SENATE BILL NO. 1839
1991 Hi. ALS 231; 1991 Hi. Act 231; 1991 Hi. SB 1839

SYNOPSIS: A BILL FOR AN ACT RELATING TO BLOOD AND SALIVA TESTING.

NOTICE: [A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED<]
[D> TEXT WITHIN THESE SYMBOLS IS DELETED <D]

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

[*1] Section 1. The legislature finds that there is a compelling need to develop and maintain accurate and complete identification information for those classes of offenders most likely to repeat and escalate their offenses: sex and violent offenders. While law enforcement officials maintain records of the fingerprints and photographs of offenders, these offenders frequently do not leave fingerprints at the scene of their crimes and their victims often are too traumatized to review or make an identification from photographs. The legislature also finds that the increased likelihood of identification of these offenders by comparison of a known DNA profile obtained from their blood, and the DNA profile of bodily fluids and tissues frequently deposited at the scene of a crime is likely to deter commission of additional offenses. The legislature further finds that the limited intrusion caused by the taking of a sample of saliva and blood represents a reasonable means of assisting in the identification of the defendant and is consistent both with the rules of discovery, which permit the testing and examination of defendants for identification purposes, and the diminished expectation of privacy enjoyed by convicted defendants. Accordingly, it is the purpose of this Act to permit the taking of a sample of saliva and two samples of blood from certain convicted defendants for the purpose of secretor status, blood type, and DNA analysis that will assist law enforcement officials in the identification of reoffenders by comparison of their DNA profile to that obtained from bodily fluids or tissues deposited at the scene of a crime.

[*2] Section 2. Section 706-603, Hawaii Revised Statutes, is amended to read as follows:
"§ 706-603 Pre-sentence mental and medical examination. [A> (A) <A] Before imposing sentence, the court may order a defendant who has been convicted of a felony or misdemeanor to submit to mental or other medical observation and examination for a period not exceeding sixty days or [D> such <D] [A> A <A] longer period, not to exceed the length of permissible imprisonment, as the court determines to be necessary for the purpose. [D> The defendant may be remanded for this purpose to any available clinic or hospital, intake service center, or community correctional center and, in <D] [A> IN <A] addition thereto or in the alternative, the court may appoint one or more qualified psychiatrists, physicians, or licensed psychologists to make the examination. The three examiners shall be appointed from a list of certified sanity examiners as determined by the state department of health. The report of the examination shall be submitted to the court. As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3).

[A> (B) AFTER ENTRY OF A PLEA OF GUILTY OR NO CONTEST OR RETURN OF A VERDICT OF GUILTY, THE COURT SHALL ORDER A DEFENDANT WHO HAS BEEN CONVICTED OF AN OFFENSE, INCLUDING ATTEMPTS, UNDER SECTION 707-701, 707-701.5, 707-730, 707-731, 707-732, 707-733, 707-741, OR 707-750 TO PROVIDE A SAMPLE OF SALIVA AND TWO SAMPLES OF BLOOD FOR THE PURPOSE OF SECRETOR STATUS, BLOOD TYPE, AND DNA ANALYSIS. BLOOD SHALL BE WITHDRAWN ONLY BY A PERSON AUTHORIZED TO WITHDRAW BLOOD UNDER SECTION 286-152. THE ARRESTING AGENCY SHALL ARRANGE FOR THE SAMPLE TO BE COLLECTED AND ANALYZED. THE RESULTS SHALL BE RECORDED, PRESERVED, AND DISSEMINATED IN A MANNER ESTABLISHED BY THE HAWAII CRIMINAL JUSTICE DATA CENTER IN A MANNER CONSISTENT WITH THE REQUIREMENTS OF CHAPTER 846. <A]

[A> (C) FOR THE PURPOSES OF THIS SECTION, THE DEFENDANT MAY BE REMANDED TO ANY AVAILABLE CLINIC OR HOSPITAL, INTAKE SERVICE CENTER, COMMUNITY CORRECTIONAL CENTER, OR STATE OR COUNTY HEALTH DEPARTMENT FACILITY." <A]

[*3] Section 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

[*4] Section 4. This Act shall take effect on July 1, 1992.

HISTORY:

Approved by the Governor on June 6, 1991

ILLINOIS COMPILED STATUTES ANNOTATED

CHAPTER 730. CORRECTIONS UNIFIED CODE OF CORRECTIONS CHAPTER V. SENTENCING ARTICLE 4. SENTENCING

5-4-3. [Persons convicted of sexual offenses or found sexually dangerous; blood and saliva tests required]

Sec. 5-4-3. (a) Any person convicted of, or who received a disposition of court supervision for, a sexual offense or attempt of a sexual offense or institutionalized as a sexually dangerous person under the Sexually Dangerous Persons Act [725 ILCS 205/0.01 et seq.] shall, regardless of the sentence imposed, be required to submit specimens of blood to the Illinois Department of State Police in accordance with the provisions of this Section, provided such person is:

(1) convicted of a sexual offense or attempt of a sexual offense on or after the effective date of this amendatory Act of 1989, and sentenced to a term of imprisonment, periodic imprisonment, fine, probation, conditional discharge or any other form of sentence, or given a disposition of court supervision for the offense, or

(2) ordered institutionalized as a sexually dangerous person on or after the effective date of this amendatory Act of 1989, or

(3) convicted of a sexual offense or attempt of a sexual offense before the effective date of this amendatory Act of 1989 and is presently confined as a result of such conviction in any State correctional facility or county jail or is presently serving a sentence of probation, conditional discharge or periodic imprisonment as a result of such conviction, or

(4) presently institutionalized as a sexually dangerous person or presently institutionalized as a person found guilty but mentally ill of a sexual offense or attempt of a sexual offense.

(b) Any person required by paragraphs (a)(1) and (a)(2) to provide specimens of blood shall be ordered by the court to have specimens of blood collected within 45 days after sentencing at a collection site designated by the Illinois Department of State Police.

(c) Any person required by paragraphs (a)(3) and (a)(4) to provide specimens of blood shall be required to provide such samples prior to final discharge, parole, or release at a collection site designated by the Illinois Department of State Police.

(d) The Illinois Department of State Police shall provide all equipment and instructions necessary for the collection of blood samples. The collection of samples shall be performed in a medically approved manner. Only a physician authorized to practice medicine, a registered nurse or other qualified person approved by the Illinois Department of Public Health may withdraw blood for the purposes of this Act. The samples shall thereafter be forwarded to the Illinois Department of State Police, Division of Forensic Services and Identification, for analysis and categorizing into genetic marker groupings.

(e) The genetic marker groupings shall be maintained by the Illinois Department of State Police, Division of Forensic Services and Identification.

(f) The genetic marker grouping analysis information obtained pursuant to this Act shall be confidential and shall be released only to peace officers of the United States, of other states or territories, of the insular possessions of the United States, of foreign countries duly authorized to receive the same, to all peace officers of the State of Illinois and to all prosecutorial agencies.

(g) For the purposes of this Section, "sexual offense" means any violation of Sections 11-11, 12-13, 12-14, 12-15 or 12-16 of the Criminal Code of 1961 [720 ILCS 5/11-11, 720 ILCS 5/12-13, 720 ILCS 5/12-14, 720 ILCS 5/12-15 or 720 ILCS 5/12-16], or any former statute of this State which defined a felony sexual offense.

(h) The Illinois Department of State Police shall be the State central repository for all genetic marker grouping analysis information obtained pursuant to this Act. The Illinois Department of State Police may promulgate rules for the form and manner of the collection of blood samples and other procedures for the operation of this Act. The provisions of the Administrative Review Law [735 ILCS 5/3-101 et seq.] shall apply to all actions taken under the rules so promulgated.

(i) A person ordered by the court to provide a blood specimen shall cooperate with the collection of the specimen and any deliberate act by that person intended to impede, delay or stop the collection of the blood specimen shall be punishable as contempt of court.

HISTORY:

Source: P.A. 86-881; 87-963, @ 2.

This section was Ill.Rev.Stat., Ch. 38, para. 1005-4-3. "An Act in relation to sexually dangerous persons, and providing for their commitment, detention and supervision," approved July 6, 1938, as amended, referred to in this section, has been repealed.

EFFECT OF AMENDMENTS.

The 1992 amendment, effective August 28, 1992, substituted "under the Sexually Dangerous Persons Act" for "pursuant to 'An Act in relation to sexually dangerous persons, and providing for their commitment, detention and supervision, approved July 6, 1938, as amended'"; deleted "and saliva" following "specimens of blood" throughout the section; substituted "45 days" for "10 days" in subsection (b); deleted "as now or hereafter amended" following "the Criminal Code of 1961" in subsection (g); and added subsection (i).

CODE OF IOWA 1993

TITLE I STATE SOVEREIGNTY AND MANAGEMENT

SUBTITLE 4 EXECUTIVE BRANCH

CHAPTER 13 ATTORNEY GENERAL

Iowa Code @ 13.10 (1992)

13.10 Physical criminal evidence - DNA profiling

The attorney general shall adopt rules in consultation with the division of criminal investigation, department of public safety, for the purpose of classifying felonies and indictable misdemeanors which shall require the offender to submit a physical specimen for DNA profiling as a condition of probation, parole, or work release. Factors to be considered shall include the deterrent effect of DNA profiling, the likelihood of repeated violations, and the seriousness of the offense.

Upon appropriation or receipt of sufficient funds, the division of criminal investigation shall carry out DNA profiling of submitted physical specimens. The division may contract with private entities for DNA profiling. "DNA profiling" means the procedure established by the division of criminal investigation, department of public safety, for determining a person's genetic identity.

HISTORY: 89 Acts, ch 156, @ 1

BALDWIN'S KENTUCKY REVISED STATUTES ANNOTATED

TITLE III EXECUTIVE BRANCH CHAPTER 17 PUBLIC SAFETY SUBCHAPTER CRIMINAL STATISTICS

17.170 (BALDWIN)@ 17.170 Blood sampling for DNA law enforcement identification purposes; penalty for tampering with blood samples.

(1) Any person convicted on or after July 14, 1992, of a felony offense under KRS Chapter 510 or KRS 530.020, shall, or who is in the custody of the Department of Corrections on July 14, 1992, under KRS Chapter 510 or KRS 530.020 may, have a sample of blood taken by the Department of Corrections for DNA (deoxyribonucleic acid) law enforcement identification purposes and inclusion in law enforcement identification databases.

(2) The samples shall be obtained in a medically approved manner by a physician, registered nurse, phlebotomist, medical technician, or medical technologist, and packaged and submitted in containers provided by the Department of State Police forensic laboratory in accordance with administrative regulations promulgated by the Department of State Police forensic laboratory. No civil liability shall attach to any person authorized to draw blood as provided by this section as a result of the act of drawing blood from any person, provided the blood was drawn according to generally accepted medical procedures.

(3) Any person who tampers or attempts to tamper with any sample of blood or the container collected pursuant to subsection (1) or (2) without lawful authority shall be guilty of a Class D felony.

HISTORY: 1992 c 175, @ 1, eff. 7-14-92

17.175 Centralized database for DNA identification records; penalty for unlawful use of database

(1) A centralized database of DNA (deoxyribonucleic acid) identification records for convicted criminals, crime scene specimens, missing persons, and close biological relatives of missing persons shall be established in the Department of State Police under the direction, control, and supervision of the State Police forensic laboratory. The established system shall be compatible with the procedures set forth in a national DNA identification index to ensure data exchange on a national level.

(2) The purpose of the centralized DNA database is to assist federal, state, and local criminal justice and law enforcement agencies within and outside the Commonwealth in the identification, detection, or exclusion of individuals who are subjects of the investigation or prosecution of sex-related crimes, violent crimes, or other crimes and the identification and location of missing and unidentified persons.

(3) The Department of State Police forensic laboratory shall receive, analyze, and classify samples of blood received from the Department of Corrections in compliance with KRS 17.170

and this section, and samples from other sources, and shall file the DNA results in the centralized databases for identification and statistical purposes.

(4) Records produced from the samples shall be used only for law enforcement purposes and shall be exempt from the provisions of KRS Chapter 61.

(5) A person whose DNA profile has been included in the data bank pursuant to this chapter may request expungement on the grounds that the felony conviction on which the authority for including the DNA profile was based, has been reversed and the case dismissed. The Department of State Police shall expunge all identifiable information in the data bank pertaining to the person and destroy all samples from the person upon receipt of:

(a) A written request for expungement pursuant to this section; and

(b) A certified copy of the court order reversing and dismissing the conviction.

(6) The Department of State Police forensic laboratory shall promulgate administrative regulations necessary to carry out the provisions of the DNA database identification system to include procedures for collection of samples of blood and the database system usage and integrity.

(7) Any person who disseminates, receives, or otherwise uses or attempts to use information in the database, knowing that such dissemination, receipt, or use is for a purpose other than authorized by law, shall be guilty of a Class A misdemeanor.

HISTORY: 1992 c 175, @ 2, eff. 7-14-92

LOUISIANA STATUTES

LOUISIANA REVISED STATUTES TITLE 15. CRIMINAL PROCEDURE CHAPTER 3-A. SEXUAL OFFENDER LAW La. R.S. 15:535 (1992)

@ 535. Blood and saliva testing; AIDS and sexually transmitted diseases

A. When a sexual offender is convicted, the court shall order and direct the offender to submit to a blood and saliva test, to be made by qualified physicians or other qualified persons, under such restrictions and direction as the court deems proper.

B. The test must include chemical testing of his blood to determine its genetic markers and of his saliva to determine its secretor status. The court shall order that the results of the test be submitted to the Louisiana Bureau of Criminal Identification and Information.

C. The court shall also order the person convicted of a sexual offense as defined in R.S. 14:42 through 43.4 to submit to a test designed to determine whether the person is infected with a sexually transmitted disease, or is infected with acquired immune deficiency syndrome (AIDS), the human immuno deficiency virus (HIV), HIV-1 antibodies, or any other probable causative agent of AIDS. The procedure or test shall be performed by a qualified physician or other qualified person who shall report any positive result to the Department of Public Safety and Corrections, make the notification of the test results to the victim of the alleged offense and notify the victim or the parent or guardian of the victim of the offense, regardless of the results.

MICHIGAN COMPILED LAWS 1992

CHAPTER 750. MICHIGAN PENAL CODE THE MICHIGAN PENAL CODE

750.520m. DNA identification profiling; chemical testing of blood and saliva samples; manner of taking and forwarding samples; existing DNA identification profile; definitions.

Sec. 520m. (1) A person convicted of a violation or an attempted violation of section 520b, 520c, 520d, 520e, 520f, or 520g shall provide samples of his or her blood for chemical testing for DNA identification profiling or a determination of the blood's genetic markers and shall provide samples of his or her saliva for chemical testing for a determination of the secretor status of the saliva. However, if at the time the person is convicted the investigating law enforcement agency or the department of state police already has a sample of the person's blood or saliva that meets the requirements of the rules promulgated under the DNA identification profiling system act, the person is not required to provide another sample of the same body fluid.

(2) The investigating law enforcement agency shall provide for the taking of the samples required to be provided under subsection (1) in a medically approved manner by qualified persons using blood specimen vials and other supplies provided by the department of state police, and shall forward those samples and any samples described in subsection (1) that were already in the agency's possession to the department of state police. The taking and forwarding of blood and saliva samples shall be done in the manner required under the rules promulgated pursuant to the DNA identification profiling system act.

(3) An investigating law enforcement agency, prosecuting agency, or court that has in its possession a DNA identification profile obtained from a sample of the blood, saliva, or tissue of a person convicted of an offense described in subsection (1) shall forward the DNA identification profile to the department of state police at or before the time of sentencing of the person upon that conviction unless the department of state police already has a DNA identification profile of the person.

(4) As used in this section:

(a) "DNA identification profile" and "DNA identification profiling" mean those terms as defined in the DNA identification profiling system act.

(b) "Investigating law enforcement agency" means the law enforcement agency responsible for the investigation of the offense for which the person is convicted.

HISTORY: Add. 1990, Act 191, Eff. Oct. 1, 1991.

NOTES: Cited in other sections: Section 750.520m is cited in @@ 28.173 and 28.175.

MINNESOTA STATUTES 1993

299C.155 Standardized evidence collection; DNA analysis data and records.

Subdivision 1. Definition. As used in this section, "DNA analysis" means the process through which deoxyribonucleic acid (DNA) in a human biological specimen is analyzed and compared with DNA from another human biological specimen for identification purposes.

Subd. 2. Uniform evidence collection. The bureau shall develop uniform procedures and protocols for collecting evidence in cases of alleged or suspected criminal sexual conduct, including procedures and protocols for the collection and preservation of human biological specimens for DNA analysis. Law enforcement agencies and medical personnel who conduct evidentiary exams shall use the uniform procedures and protocols in their investigation of criminal sexual conduct offenses. The uniform procedures and protocols developed under this subdivision are not subject to the rulemaking provisions of chapter 14.

Subd. 3. DNA analysis and data bank. The bureau shall adopt uniform procedures and protocols to maintain, preserve, and analyze human biological specimens for DNA. The bureau shall establish a centralized system to cross-reference data obtained from DNA analysis. The uniform procedures and protocols developed under this subdivision are not subject to the rulemaking provisions of chapter 14.

Subd. 4. Records. The bureau shall perform DNA analysis and make data obtained available to law enforcement officials in connection with criminal investigations in which human biological specimens have been recovered. Upon request, the bureau shall also make the data available to the prosecutor and the subject of the data in any subsequent criminal prosecution of the subject.

HISTORY: 1989 c 290 art 4 s 7; 1990 c 499 s 5,6

299C.17 Reports to bureau by court administrators

The superintendent shall have power to require the court administrator of any county to file with the department, at such time as the superintendent may designate, a report, upon such form as the superintendent may prescribe, furnishing such information as the superintendent may require with regard to the prosecution and disposition of criminal cases. A copy of the report shall be kept on file in the office of the court administrator.

609.3461 DNA analysis of sex offenders required

Subdivision 1. Upon sentencing. The court shall order an offender to provide a biological specimen for the purpose of DNA analysis as defined in section 299C.155 when:

(1) the court sentences a person charged with violating or attempting to violate section 609.342, 609.343, 609.344, or 609.345, who is convicted of violating one of those sections or of any offense arising out of the same set of circumstances;

(2) the court sentences a person as a patterned sex offender under section 609.1352; or

(3) the juvenile court adjudicates a person a delinquent child who is the subject of a delinquency petition for violating or attempting to violate section 609.342, 609.343, 609.344, or 609.345, and the delinquency adjudication is based on a violation of one of those sections or of any offense arising out of the same set of circumstances. The biological specimen or the results of the analysis shall be maintained by the bureau of criminal apprehension as provided in section 299C.155.

Subd. 2. Before release. If a person convicted of violating or attempting to violate section 609.342, 609.343, 609.344, or 609.345, or initially charged with violating one of those sections and convicted of another offense arising out of the same set of circumstances, or sentenced as a patterned sex offender under section 609.1352, and committed to the custody of the commissioner of corrections, or serving a term of imprisonment in this state under a reciprocal agreement although convicted in another state of an offense described in this subdivision or a similar law of the United States or any other state, has not provided a biological specimen for the purpose of DNA analysis, the commissioner of corrections or local corrections authority shall order the person to provide a biological specimen for the purpose of DNA analysis before completion of the person's term of imprisonment. The commissioner of corrections or local corrections authority shall forward the sample to the bureau of criminal apprehension.

Subd. 3. Offenders from other states. When the state accepts an offender from another state under the interstate compact authorized by section 243.16, the acceptance is conditional on the offender providing a biological specimen for the purposes of DNA analysis as defined in section 299C.155, if the offender was convicted of an offense described in subdivision 1 or a similar law of the United States or any other state. The specimen must be provided under supervision of staff from the department of corrections or a community corrections act county within 15 business days after the offender reports to the supervising agent. The cost of obtaining the biological specimen is the responsibility of the agency providing supervision.

HISTORY:

1989 c 290 art 4 s 16; 1991 c 232 s 2; 1991 c 285 s 11; 1993 c 326 art 10 s 15; art 13 s 32

634.25 Admissibility of results of DNA analysis

In a civil or criminal trial or hearing, the results of DNA analysis, as defined in section 299C.155, are admissible in evidence without antecedent expert testimony that DNA analysis provides a trustworthy and reliable method of identifying characteristics in an individual's genetic material upon a showing that the offered testimony meets the standards for admissibility set forth in the Rules of Evidence.

634.26 Statistical probability evidence

In a civil or criminal trial or hearing, statistical population frequency evidence, based on genetic or blood test results, is admissible to demonstrate the fraction of the population that would have the same combination of genetic markers as was found in a specific human biological specimen. "Genetic marker" means the various blood types or DNA types that an individual may possess.

HISTORY:

1989 c 290 art 4 s 19

634.30 Evidence obtained in foreign jurisdictions

Relevant evidence shall not be excluded in any criminal trial or hearing or in any proceeding arising under section 169.123 on the ground that it existed or was obtained outside of this state.

HISTORY:

1990 c 449 s 4

MISSOURI ADVANCE LEGISLATIVE SERVICE

SENATE BILL NO. 152

SYNOPSIS: AN ACT Relating to the establishment of a DNA profiling system by the Missouri department of public safety.

Be it enacted by the General Assembly of the State of Missouri, as follows:

[*1] Section 1. 1. The Missouri department of public safety shall develop and establish a "DNA Profiling System", referred to in sections 1, 2, 3, and 4 of this act as the system, to support criminal justice services in the local communities throughout this state. This establishment shall be accomplished through consultation with the Kansas City, Missouri regional crime laboratory, Missouri state highway patrol crime laboratory, St. Louis, Missouri metropolitan crime laboratory, and southeast Missouri regional crime laboratory, Springfield regional crime laboratory, and the Missouri Southern State College Police Academy Regional Crime Lab.

2. The DNA profiling system as established in this section shall be compatible with that used by the Federal Bureau of Investigation.

3. The department of public safety shall report on the system to the legislature not later than the fifteenth of January, 1992. This report shall include a timeline for implementing each stage, a local agency financial participation analysis, a system analysis and a full cost/purchase analysis.

[*2] Section 2. The department of public safety, in consultation with Kansas City, Missouri regional crime laboratory, Missouri state highway patrol crime laboratory, St. Louis, Missouri metropolitan crime laboratory, Springfield regional crime laboratory and southeast Missouri regional crime laboratory, may:

(1) Provide the system to law enforcement agencies throughout the state; and

(2) Provide assistance to law enforcement officials and prosecutors in the preparation and utilization of DNA evidence for presentation in court; and

(3) Provide expert testimony in court on DNA evidentiary issues.

[*3] Section 3. Every individual convicted in a Missouri circuit court of a felony, defined as a violent offense under chapter 565, RSMo, or as a sex offense under chapter 566, RSMo, excluding sections 566.010 and 566.020, RSMo, shall have a blood sample drawn for purposes of DNA profiling analysis before release from, or transfer to, a state correctional institution, county jail or detention facility. Any blood sample taken shall be used solely for the purpose of providing DNA or other blood grouping lists for profiling analysis and prosecution of a violent offense or a sex offense.

[*4] Section 4. 1. Except as provided in subsection 3 of this section, no local law enforcement agency may establish or operate a system before January 15, 1992, and unless:

(1) The equipment of the local system is compatible with that of the state system; and

(2) The local system is equipped to receive and answer inquiries from the Missouri DNA profiling system or FBI databank and transmit data to the Missouri DNA profiling system and FBI databank; and

(3) The procedure and rules for the collection, analysis, storage, expungement and use of DNA profiling data do not conflict with procedures and rules applicable to the Missouri system and the FBI DNA databank.

2. The Missouri department of public safety shall adopt rules to implement this section.

3. Nothing in subdivisions (1) and (2) of this section shall prohibit a local law enforcement agency from performing DNA profiling analysis in individual cases to assist law enforcement officials and prosecutors in the preparation and use of DNA evidence for presentation in court. Implementation of this act shall be subject to future appropriations except for section 1.

HISTORY:

Approved by Governor on June 20, 1991

NEVADA REVISED STATUTES ANNOTATED

TITLE 14. PROCEDURE IN CRIMINAL CASES CHAPTER 176. JUDGMENT AND EXECUTION SENTENCE AND JUDGMENT

176.111. Conviction of sexual offense: Tests of offenders' blood and saliva

1. When a defendant is convicted of a sexual offense, the court, by order, shall direct the defendant to submit to a blood and saliva test, to be made by qualified persons, under such restrictions and directions as the court deems proper. The tests must include analyses of his blood to determine its genetic markers and of his saliva to determine its secretor status. The court shall order that the results of the tests be submitted to the central repository for Nevada records of criminal history.

2. For the purposes of this section, "sexual offense" means:

- (a) Sexual assault pursuant to NRS 200.366;
- (b) Statutory sexual seduction pursuant to NRS 200.368;
- (c) Use of a minor in producing pornography pursuant to NRS 200.710;
- (d) Promotion of a sexual performance of a minor pursuant to NRS 200.720
- (e) Incest pursuant to NRS 201.180; or
- (f) Lewdness with a child pursuant to NRS 201.230.

HISTORY: 1989, ch. 168, @ 1, p. 376.

LEGAL PERIODICALS

Criminal Procedure; Sex Offenders—Blood and Saliva Test, 1989 Pac. L.J. Rev. Nev. Legis. 89.

GENERAL STATUTES OF NORTH CAROLINA

CHAPTER 15A. CRIMINAL PROCEDURE ACT SUBCHAPTER II. LAW-ENFORCEMENT AND INVESTIGATIVE PROCEDURES ARTICLE 13. DNA DATABASE AND DATABANK

15A-266

This Article may be cited as the DNA Database and Databank Act of 1993.

HISTORY: 1993, c. 401, s. 1.

15A-266.1. Policy

It is the policy of the State to assist federal, State, and local criminal justice and law enforcement agencies in the identification, detection, or exclusion of individuals who are subjects of the investigation or prosecution of violent crimes against the person. Identification, detection, and exclusion is facilitated by the analysis of biological evidence that is often left by the perpetrator or is recovered from the crime scene. The analysis of biological evidence can also be used to identify missing persons and victims of mass disasters.

HISTORY: 1993, c. 401, s. 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, or chapter.

15A-266.2. Definitions

As used in this Article, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(1) "CODIS" means the FBI's national DNA identification index system that allows the storage and exchange of DNA records submitted by State and local forensic DNA laboratories. The term "CODIS" is derived from Combined DNA Index System.

(2) "DNA" means deoxyribonucleic acid. DNA is located in the nucleus of cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

(3) "DNA Record" means DNA identification information stored in the State DNA Database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from the DNA typing tests. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification tests on an individual's DNA sample are also collectively referred to as the DNA profile of an individual.

(4) "DNA Sample" in this Article means a blood sample provided by any person convicted of offenses covered by this Article or submitted to the SBI Laboratory for analysis pursuant to a criminal investigation.

(5) "FBI" means the Federal Bureau of Investigation.

(6) "SBI" means the State Bureau of Investigation. The SBI is responsible for the policy management and administration of the State DNA identification record system to support law enforcement, and for liaison with the FBI regarding the State's participation in CODIS.

(7) "State DNA Database" means the SBI's DNA identification record system to support law enforcement. It is administered by the SBI and provides DNA records to the FBI for storage and maintenance in CODIS. The SBI's DNA Database system is the collective capability provided by computer software and procedures administered by the SBI to store and maintain DNA records related to forensic casework, to convicted offenders required to provide a DNA sample under this Article, and to anonymous DNA records used for research or quality control.

(8) "State DNA Databank" means the repository of DNA samples collected under the provisions of this Article.

HISTORY: 1993, c. 401, s. 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, or chapter.

15A-266.3. Procedural compatibility with the FBI

The DNA identification system as established by the SBI shall be compatible with the procedures specified by the FBI, including use of comparable test procedures, laboratory equipment, supplies, and computer software.

HISTORY: 1993, c. 401, s. 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, or chapter.

15A-266.4. Blood sample required for DNA analysis upon conviction

(a) On or after 1 July 1994, a person who is convicted of any of the crimes listed in subsection (b) of this section shall have a DNA sample drawn upon intake to a jail or prison. In addition, every person convicted on or after 1 July 1994, of any of these crimes, but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence. A person who has been convicted and incarcerated as a result of a conviction of one or more of these crimes prior to 1 July 1994 shall have a DNA sample drawn before parole or release from the penal system.

(b) Crimes covered by this Article include:

- G.S. 14-17 - Murder in the first and second degree.
- G.S. 14-27.2 - First degree rape.
- G.S. 14-27.3 - Second degree rape.
- G.S. 14-27.4 - First degree sexual offense.
- G.S. 14-27.5 - Second degree sexual offense.
- G.S. 14-28 - Malicious castration.

- G.S. 14-29 - Castration or other maiming.
- G.S. 14-30 - Malicious maiming.
- G.S. 14-30.1 - Malicious throwing of corrosive acid or alkali.
- G.S. 14-31 - Malicious assault in secret manner.
- G.S. 14-32 - Felonious assault with deadly weapon with intent to kill.
- G.S. 14-32.1 - Assaults on handicapped persons.
- G.S. 14-34.1 - Discharging barreled weapon or firearm into occupied property.
- G.S. 14-34.2 - Assault with firearm or other deadly weapon upon law enforcement officer, fireman, or EMS personnel.
- G.S. 14-39(a)(3) - Kidnapping for the purpose of doing serious bodily harm to the person.
- G.S. 14-49 - Malicious use of explosive or incendiary.
- G.S. 14-58.2 - Burning of mobile or manufactured type house, or recreational trailer home.
- G.S. 14-202.1 - Taking indecent liberties with children.
- G.S. 14-87 - Robbery with a dangerous weapon.
- G.S. 14-277.3 - Stalking.
- Common law robbery.
- First degree arson.

HISTORY: 1993, c. 401, s. 1.

15A-266.5. Tests to be performed on blood sample

(a) The tests to be performed on each blood sample are:

- (1) To analyze and type the genetic markers contained in or derived from the DNA.
- (2) For law enforcement identification purposes.
- (3) For research and administrative purposes, including:
 - a. Development of a population database when personal identifying information is removed.
 - b. To support identification research and protocol development of forensic DNA analysis methods.
 - c. For quality control purposes.
 - d. To assist in the recovery or identification of human remains from mass disasters or for other humanitarian purposes, including identification of missing persons.

(b) The DNA record of identification characteristics resulting from the DNA testing shall be stored and maintained by the SBI in the State DNA Database. The DNA sample itself will be stored and maintained by the SBI in the State DNA Databank.

HISTORY: 1993, c. 401, s. 1.

15A-266.6. Procedures for withdrawal of blood sample for DNA analysis

Each DNA sample required to be drawn pursuant to G.S. 15A-266.4 from persons who are incarcerated shall be drawn at the place of incarceration. DNA samples from persons who are not sentenced to a term of confinement shall be drawn at a prison or jail unit to be specified by the sentencing court. Only a correctional health nurse technician, physician, registered professional

nurse, licensed practical nurse, laboratory technician, phlebotomist, or other health care worker with phlebotomy training shall draw any DNA sample to be submitted for analysis. No civil liability shall attach to any person authorized to draw blood by this section as a result of drawing blood from any person if the blood was drawn according to recognized medical procedures. No person shall be relieved from liability for negligence in the drawing of any DNA sample.

HISTORY: 1993, c. 401, s. 1.

15A-266.7. Procedures for conducting DNA analysis of blood sample

The SBI shall adopt rules governing the procedures to be used in the submission, identification, analysis, and storage of DNA samples and typing results of DNA samples submitted under this Article. The DNA sample shall be securely stored in the State Databank. The typing results shall be securely stored in the State Database. These procedures shall also include quality assurance guidelines to insure that DNA identification records meet standards and audit standards for laboratories which submit DNA records to the State Database. Records of testing shall be retained on file at the SBI.

HISTORY: 1993, c. 401, s. 1.

15A-266.8. DNA database exchange

(a) It shall be the duty of the SBI to receive DNA samples, to store, to analyze or to contract out the DNA typing analysis to a qualified DNA laboratory that meets the guidelines as established by the SBI, classify, and file the DNA record of identification characteristic profiles of DNA samples submitted pursuant to G.S. 15A-266.7 and to make such information available as provided in this section. The SBI may contract out DNA typing analysis to a qualified DNA laboratory that meets guidelines as established by the SBI. The results of the DNA profile of individuals in the State Database shall be made available to local, state, or federal law enforcement agencies, approved crime laboratories which serve these agencies, or the district attorney's office upon written or electronic request and in furtherance of an official investigation of a criminal offense. These records shall also be available upon receipt of a valid court order directing the SBI to release these results to appropriate parties not listed above, when the court order is signed by a superior court judge after a hearing. The SBI shall maintain a file of such court orders.

(b) The SBI shall adopt rules governing the methods of obtaining information from the State Database and CODIS and procedures for verification of the identity and authority of the requester.

(c) The SBI shall create a separate population database comprised of blood samples obtained under this Article, after all personal identification is removed. Nothing shall prohibit the SBI from sharing or disseminating population databases with other law enforcement agencies, crime laboratories that serve them, or other third parties the SBI deems necessary to assist the SBI with statistical analysis of the SBI's population databases. The population database may be made available to and searched by other agencies participating in the CODIS system.

HISTORY: 1993, c. 401, s. 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, or chapter.

15A-266.9. Cancellation of authority to exchange DNA records

The SBI is authorized to revoke the right of a forensic DNA laboratory within the State to exchange DNA identification records with federal, state, or local criminal justice agencies if the required control and privacy standards specified by the SBI for the State DNA Database are not met by these agencies.

HISTORY: 1993, c. 401, s. 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, or chapter.

15A-266.10. Expungement

(a) Any person whose DNA record or profile has been included in the State Database and whose DNA sample is stored in the State Databank may apply for expungement on the grounds that the felony conviction that resulted in the inclusion of the person's DNA record or profile in the State Database or the inclusion of the person's DNA sample in the State Databank has been reversed and the case dismissed. The person, either individually or through an attorney, may apply to the court for expungement of the record as provided in G.S. 15A-146. A copy of the application for expungement shall be served on the district attorney for the judicial district in which the felony conviction was obtained not less than 20 days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the conviction shall be attached to an order of expungement.

(b) Upon receipt of an order of expungement, the SBI shall purge the DNA record and all other identifiable information from the State Database and the DNA sample stored in the State Databank covered by the order. If the individual has more than one entry in the State Database and Databank, then only the entry covered by the expungement order shall be deleted from the State Database or Databank.

HISTORY: 1993, c. 401, s. 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, or chapter.

15A-266.11. Unauthorized uses of DNA Data- bank; penalties

(a) Any person who, by virtue of employment, or official position, has possession of, or access to, individually identifiable DNA information contained in the State DNA Database or Databank and who willfully discloses it in any manner to any person or agency not entitled to receive it is guilty of a misdemeanor in accordance with G.S. 14-3.

(b) Any person who, without authorization, willfully obtains individually identifiable DNA information from the State DNA Database or Databank is guilty of a misdemeanor in accordance with G.S. 14-3.

HISTORY: 1993, c.401, s. 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, or chapter.

15A-266.12. Confidentiality of records through 15A-270

(a) All DNA profiles and samples submitted to the SBI pursuant to this article shall be treated as confidential except as provided in G.S. 15A-266.8.

(b) Only DNA records that directly relate to the identification of individuals shall be collected and stored. These records shall not be used for any purpose other than to facilitate personal identification of an offender; provided that in appropriate circumstances such records may be used to identify potential victims of mass disasters or missing persons.

66TH OREGON LEGISLATIVE ASSEMBLY, 1991 REGULAR SESSION

CHAPTER 669 House Bill 3444

SYNOPSIS: AN ACT Relating to blood testing; creating new provisions; amending ORS 161.325 and 419.800; appropriating money; and limiting expenditures.

Be It Enacted by the People of the State of Oregon:

[*1] SECTION 1. Section 2 of this Act is added to and made a part of ORS chapter 137.

[*2] SECTION 2. (1) This section applies to any person convicted of one of the following offenses:

(a) Rape, sodomy, sexual penetration with a foreign object, sexual abuse, public indecency, incest or using a child in a display of sexually explicit conduct, as those offenses are defined in ORS 163.355 to 163.425, 163.465 (1)(c), 163.525 and 163.670;

(b) Burglary, as defined in ORS 164.215 and 164.225, when committed with intent to commit any offense listed in paragraph (a) of this subsection;

(c) Promoting or compelling prostitution, as defined in ORS 167.012 and 167.017;

(d) Conspiracy or attempt to commit any felony listed in paragraphs (a) to (c) of this subsection; or

(e) Murder or aggravated murder.

(2) When a person is convicted of an offense listed in subsection (1) of this section:

(a) The person shall, whether or not ordered to do so by the court under paragraph (b) of this subsection, provide a blood sample at the request of the appropriate agency designated in paragraph (c) of this subsection.

(b) The court shall include in the judgment of conviction an order stating that a blood sample is required to be drawn at the request of the appropriate agency and, unless the convicted person lacks the ability to pay, that the person shall reimburse the appropriate agency for the cost of drawing and transmitting the blood sample. If the judgement places the convicted person on probation, the court shall order the convicted person to submit to the drawing of a blood sample as a condition of the probation.

(c) The appropriate agency shall cause a blood sample to be drawn and transmitted to the Department of State Police. The agency shall cause the sample to be drawn as soon as practicable after conviction, but in the case of any person ordered to serve a term of incarceration as a part of the sentence, prior to the person's release from incarceration. Whenever it is notified by the De-

partment of State Police that a sample is not adequate for analysis, the agency shall draw and transmit an additional sample. The appropriate agency shall be:

(A) The Department of Corrections, whenever the convicted person is committed to the legal and physical custody of the department.

(B) In all other cases, the law enforcement agency attending upon the court.

(3) A blood sample may only be drawn in a medically acceptable manner by a licensed professional nurse, a licensed practical nurse, a qualified medical technician, a licensed physician or a person acting under the direction or control of a licensed physician. A person authorized by this subsection to draw a blood sample shall not be held civilly liable for drawing a sample in a medically acceptable manner in accordance with subsection (2) of this section, ORS 161.325 and section 10 of this 1991 Act. The sample shall also be drawn and transmitted in accordance with any procedures that may be established by the Department of State Police. However, no test result or opinion based upon a test result shall be rendered inadmissible as evidence solely because of deviations from procedures adopted by the Department of State Police that do not affect the reliability of the opinion or test result.

(4) No sample is required to be drawn if:

(a) The Department of State Police notifies the court or the appropriate agency that it has previously received an adequate blood sample drawn from the convicted person in accordance with this section, ORS 161.325 or section 10 of this 1991 Act; or

(b) The court determines that drawing a sample would create a substantial and unreasonable risk to the health of the convicted person.

[*3] SECTION 3. Section 4 of this Act is added to and made a part of ORS chapter 181.

[*4] SECTION 4. (1) The Department of State Police is authorized to:

(a) Store blood samples received under authority of subsection (2) of this section, ORS 161.325 and section 10 of this 1991 Act, and autoradiographs and other physical evidence obtained from analysis of such samples;

(b) Analyze such samples for the purpose of establishing the genetic profile of the donor or otherwise determining the identity of persons or contract with other qualified public or private laboratories to conduct that analysis;

(c) Maintain a criminal identification data base containing information derived from blood analysis;

(d) Utilize such samples to create statistical population frequency data bases, provided that genetic profiles or other such information in a population frequency data base shall not be identified with specific individuals; and

(e) Adopt rules establishing procedures for drawing, transmitting and analyzing blood samples and for storing and destroying blood samples, autoradiographs and other physical evidence and criminal identification information obtained from such analysis. Procedures for blood analysis may include all techniques which the Department of State Police determines are accurate and reliable in establishing identity, including but not limited to, analysis of DNA (deoxyribonucleic

acid), antigen antibodies, polymorphic enzymes or polymorphic proteins.

(2) The Department of State Police shall not transfer or disclose any sample, autoradiograph, physical evidence or criminal identification information obtained, stored or maintained under authority of this section, ORS 161.325 or section 2 or 10 of this 1991 Act except:

(a) To a law enforcement agency as defined in ORS 181.010, a district attorney or the Criminal Justice Division of the Department of Justice for the purpose of establishing the identity of a person in the course of a criminal investigation or proceeding;

(b) To a party in a criminal prosecution or juvenile proceeding if discovery or disclosure is required by a separate statutory or constitutional provision; or

(c) To a court or grand jury in response to a lawful subpoena or court order when the evidence is not otherwise privileged.

(3) Any public agency that receives a sample, autoradiograph, physical evidence or criminal identification information under authority of subsection (2) of this section shall not disclose it except as provided in subsection (2) of this section.

(4) Notwithstanding subsections (2) and (3) of this section, any person who is the subject of a record within a criminal identification data base maintained under the authority of this section may, upon request, inspect that information at a time and location designated by the department. The department may deny inspection if it determines that there is a reasonable likelihood that such inspection would prejudice a pending criminal investigation. In any case, the department is not required to allow the person or anyone acting on the person's behalf to test any blood sample, autoradiograph or other physical evidence. The department shall adopt procedures governing the inspection of records, samples and autoradiographs and challenges to the accuracy of records. The procedures shall accommodate the need to preserve the materials from contamination and destruction.

(5) Whenever a court reverses the conviction, judgment or order that created an obligation to provide a blood sample under section 2 (2) of this 1991 Act, ORS 161.325 or section 10 of this 1991 Act, the person who provided the sample may request destruction of the sample and any criminal identification record created in connection with that sample. Upon receipt of a written request for destruction pursuant to this section and a certified copy of the court order reversing the conviction, judgment or order, the Department of State Police shall destroy any sample received from the person, any physical evidence obtained from that sample and any criminal identification records pertaining to the person, unless the department determines that the person has otherwise become obligated to submit a blood sample as a result of a separate conviction, juvenile adjudication or finding of guilty except for insanity for an offense listed in section 2 (1) of this 1991 Act. The department is not required to destroy an autoradiograph or other item of physical evidence obtained from a blood sample if evidence relating to another person subject to the provisions of this 1991 Act would thereby be destroyed. Notwithstanding this subsection, no sample, autoradiograph, physical evidence or criminal identification record is affected by an order to set aside a conviction under ORS 137.225.

[*5] SECTION 5. The provisions of section 2 of this Act apply to any person who, on the effective date of this Act, is serving a term of incarceration as a sentence or as a condition of probation imposed for conviction of an offense listed in section 2 (1) of this Act, and any such person shall submit to the drawing of a blood sample. Before releasing any such person from incarceration, the supervisory authority shall cause a blood sample to be drawn and transmitted in accordance with section 2 of this Act.

[*6] SECTION 6. There is appropriated to the Department of Corrections, for the biennium beginning July 1, 1991, out of the General Fund, the sum of \$ 11,261 for the purpose of carrying out the provisions of this Act.

[*7] SECTION 7. There is appropriated to the Department of State Police, for the biennium beginning July 1, 1991, out of the General Fund, the sum of \$ 65,118 for the purpose of carrying out the provisions of this Act.

[*7a] SECTION 7a. Notwithstanding any other law, the amount established for the biennium beginning July 1, 1991, as the maximum limit for payment of expenses from the State Police Account, including Miscellaneous Receipts and federal funds, to be expended only for operating expenses relating to moneys received from Miscellaneous Receipts is increased by \$ 350,000.

[*8] SECTION 8. ORS 161.325 is amended to read:

161.325. (1) After entry of judgment of guilty except for insanity, the court shall, on the basis of the evidence given at the trial or at a separate hearing, if requested by either party, make an order as provided in ORS 161.327 or 161.329, whichever is appropriate.

(2) If the court makes an order as provided in ORS 161.327, it shall also:

(a) Determine on the record the offense of which the person otherwise would have been convicted; and

(b) Make specific findings on whether there is a victim of the crime for which the defendant has been found guilty except for insanity and, if so, whether the victim wishes to be notified, under ORS 161.326 (2), of any Psychiatric Security Review Board hearings concerning the defendant and of any conditional release, discharge or escape of the defendant.

(3) The court shall include any such findings in its order.

[A> (4) EXCEPT UNDER CIRCUMSTANCES DESCRIBED IN SECTION 2 (4) OF THIS 1991 ACT, WHENEVER A DEFENDANT CHARGED WITH ANY OFFENSE LISTED IN SECTION 2 (1) OF THIS 1991 ACT HAS BEEN FOUND GUILTY OF THAT OFFENSE EXCEPT FOR INSANITY, THE COURT SHALL, IN ANY ORDER ENTERED UNDER ORS 161.327 OR 161.329, DIRECT THE DEFENDANT TO SUBMIT TO THE DRAWING OF A BLOOD SAMPLE IN THE MANNER PROVIDED IN SECTION 2 OF THIS 1991 ACT. <A]

[*9] SECTION 9. Section 10 of this Act is added to and made a part of ORS chapter 419.

[*10] SECTION 10. (1) Whenever a child is found to be within the jurisdiction of the court under ORS 419.476 (1)(a) for having committed an act which, if done by an adult would constitute a felony offense listed in section 2(1) of this 1991 Act, the court shall order the child to submit to the drawing of a blood sample in the manner provided by section 2 of this 1991 Act. The court shall further order that as soon as practicable after the entry of the dispositional order, the law enforcement agency attending upon the court shall cause a blood sample to be drawn and transmitted in accordance with section 2 of this 1991 Act. The court may also order the child to reimburse the appropriate agency for the cost of drawing and transmitting the blood sample.

(2) No order for the drawing and transmittal of a blood sample is required to be entered if:

(a) The Department of State Police notifies the court or the law enforcement agency attending upon the court that it has previously received an adequate blood sample taken from the child in accordance with this section, section 2 of this 1991 Act or ORS 161.325 (4); or

(b) The court determines that drawing a sample would create a substantial and unreasonable risk to the health of the child.

(3) Notwithstanding any other provision of law, blood samples, autoradiographs and other physical evidence and criminal identification information obtained under authority of this section or as a result of analysis conducted pursuant to section 4 of this 1991 Act may be maintained, stored, destroyed and released to authorized persons or agencies under the conditions established in section 4 of this 1991 Act and rules adopted by the Department of State Police under the authority of that section.

419.800

(1) "Contract" means any instance in which a person's act or behavior, or alleged act or behavior, which could result in a juvenile court's assumption of jurisdiction under ORS 419.476 (1)(a) to (c) and (f) comes to the attention of an agency specified in subsection (4) of this section.

(2) "Expunction" means:

(a) The removal and destruction of a judgment or order related to a contact;

(b) The removal and destruction of all records and all references; and

(c) Where a record is kept by the Children's Services Division, either the sealing of such record by the division, or in a multiperson file, the affixing to the front of the file, by the division, a stamp or statement identifying the name of the individual, the date of expunction and instruction that no further reference shall be made to the material that is subject to the expunction order except upon an order of a court of competent jurisdiction.

(3) "Person" includes a person under 18 years of age.

(4) "Record" includes a report, exhibit or other material which contains information relating to a person's contact with any law enforcement agency or juvenile court or juvenile department and is kept manually, through the use of electronic data processing equipment, or by any other means

by a law enforcement or public investigative agency, a juvenile court or juvenile department or an agency of the State of Oregon. "Record" does not include:

(a) A transcript of a student's academic record at MacLaren School for Boys or Hillcrest School of Oregon;

(b) Material on file with a public agency which is necessary for obtaining federal financial participation regarding financial assistance or services on behalf of a person who has had a contact;

(c) Records kept or disseminated by the Motor Vehicles Division, State Marine Board, State Fish and Wildlife Commission pursuant to juvenile or adult order or recommendation;

(d) Police and court records related to an order of remand where the matter is still pending in the adult court or on appeal therefrom, or to any disposition as an adult pursuant to such order;

(e) Records related to a support obligation;

(f) Medical records;

(g) Records of a proposed or adjudicated termination of parent-child relationship and adoptions;

(h) Any law enforcement record of a person who currently does not qualify for expunction or of current investigations or cases remanded to the adult court;

(i) Records and case reports of the Oregon Supreme Court and the Oregon Court of Appeals; [D] or [D]

(j) Any records in cases under ORS 419.476 (1)(a) in which a juvenile court found a person to be within the jurisdiction of the court based upon the person's commission of an act which would constitute child abuse as defined in ORS 418.740 and if done by an adult would constitute one of the following offenses:

(A) Criminal mistreatment in the first degree under ORS 163.205;

(B) Rape in the third degree under ORS 163.355;

(C) Rape in the second degree under ORS 163.365;

(D) Rape in the first degree under ORS 163.375;

(E) Sodomy in the third degree under ORS 163.385;

(F) Sodomy in the second degree under ORS 163.395;

(G) Sodomy in the first degree under ORS 163.405;

(H) Sexual penetration with a foreign object in the second degree under ORS 163.408;

(I) Sexual penetration with a foreign object in the first degree under ORS 163.411;

(J) Sexual abuse in the second degree under ORS 163.415;

(K) Sexual abuse in the first degree under ORS 163.425;

(L) Promoting prostitution under ORS 167.012; and

(M) Compelling prostitution under ORS 167.017 ID> . <D] [A>; OR <A]

[A> (K) BLOOD SAMPLES, AUTORADIOGRAPHS AND OTHER PHYSICAL EVIDENCE AND IDENTIFICATION INFORMATION OBTAINED, STORED OR MAINTAINED BY THE DEPARTMENT OF STATE POLICE UNDER AUTHORITY OF SECTION 2, 4 OR 10 OF THIS 1991 ACT. <A]

(5) "Termination" means:

(a) For a person who is the subject of a record kept by a juvenile court or juvenile department, the final disposition of a case by informal means, by a decision not to place the person on probation or make the person a ward of the court after the person has been found to be within the court's jurisdiction, or by a discontinuance of probation or of the court's wardship under ORS 419.531.

(b) For a person who is the subject of a record kept by a law enforcement or public investigative agency, a juvenile court or juvenile department or an agency of the State of Oregon, the final disposition of the person's most recent contact with a law enforcement agency.

HISTORY

Approved by the Governor on 7/25/91

Filed by Office of Secretary of State on 7/26/91

SOUTH DAKOTA CODIFIED LAWS

TITLE 23. LAW ENFORCEMENT CHAPTER 23-5. CRIMINAL IDENTIFICATION S.D. Codified Laws @ 23-5-14 (1994)

23-5-14. Procuring genetic marker grouping analysis information where sex offense alleged — Responsibilities of attorney general and law enforcement officers

The attorney general shall procure and file for record genetic marker grouping analysis information from any person taken into custody for a violation of the provisions of chapter 22-22. The attorney general also shall procure and file for record such genetic marker grouping analysis information of any person confined in any workhouse, jail, reformatory, penitentiary or other penal institution or otherwise under supervision for a violation of the provisions of chapter 22-22. The attorney general also shall cooperate with and assist sheriffs, chiefs of police and other law enforcement officers to the end that a complete state system of genetic marker grouping analysis information may be established. Sheriffs, chiefs of police and any other law enforcement officers of the state, immediately upon the arrest of any person for a violation of the provisions of chapter 22-22, shall arrange for collection of blood and saliva specimens for genetic marker grouping analysis according to the system established by the division of criminal investigation and shall forward any such specimen to the division for classification and filing.

23-5-15. Persons convicted of sex offense prior to July 1, 1990 - Collection of blood and saliva specimens prior to release from supervision. Any person convicted under the provisions of chapter 22-22 prior to July 1, 1990 and confined as a result of such conviction on July 1, 1990 in a facility outlined in 23-5-14, released on parole from such confinement or subject to probation for such conviction shall be required to submit specimens of his blood and saliva to the division of criminal investigation. Any such specimen shall be collected prior to any final release of the person from supervision by the state at a collection site designated by the division of criminal investigation.

HISTORY: Source: SL 1990, ch 173, @ 2.

23-5-16. Collection of specimens - Authorized personnel - No liability where ordinary care used — Private entities may provide analysis and categorization. The division of criminal investigation shall provide equipment and instructions as necessary for collection of blood and saliva specimens pursuant to this chapter. Such collection of specimens shall be performed in a medically approved manner. Only a physician, laboratory technician, registered nurse, physician's assistant, phlebotomist, expanded role licensed practical nurse, medical technician or medical technologist may withdraw blood or saliva for the purpose of genetic marker grouping analysis. Any such authorized person, acting on the presumption of consent, or any hospital employing such person, is not liable and may not be held to pay damages to the party from whom the blood or saliva sample is withdrawn, if the withdrawal is administered with usual and ordinary care. Any such specimen shall be forwarded to the division of criminal investigation for analysis and categorization into genetic marker groupings. Such genetic marker groupings shall be maintained by the division of criminal investigation. The division may contract with private entities for such specimen analysis and categorization.

HISTORY: Source: SL 1990, ch 173, @ 3.

23-5-17. Confidentiality — Promulgation of rules and procedures regarding collection of specimens. Genetic marker grouping analysis information obtained pursuant to this chapter is confidential, is not public information and is subject to the provisions of chapter 23-5. The office of the attorney general shall promulgate rules, pursuant to chapter 1-26, for the form and manner of the collection of blood and saliva specimens and other procedures for the operation of this chapter. However, the department of corrections, in cooperation with the office of the attorney general, shall promulgate rules, pursuant to chapter 1-26, for collection of blood and saliva specimens pursuant to @ 23-5-15.

HISTORY: Source: SL 1990, ch 173, @ 4.

23-5-18. Cost of collecting specimen - Reimbursement by convicted defendant. The cost of collection of blood and saliva specimens pursuant to the provisions of this chapter shall initially be borne by the county where such collection takes place, but such county shall be reimbursed therefor by the office of the attorney general. Any court suspending imposition of sentence or sentencing a person for a conviction under the provisions of chapter 22-22 shall require such person to bear the cost of such collection.

HISTORY: Source: SL 1990, ch 173, @ 5.

CODE OF VIRGINIA

TITLE 19.2. CRIMINAL PROCEDURE CHAPTER 18. SENTENCE; JUDGMENT; EXECUTION OF SENTENCE ARTICLE 1.1. DNA ANALYSIS AND DATA BANK

19.2-310.2. Blood sample required for DNA analysis upon conviction of a felony. Every person convicted of a felony on or after July 1, 1990, and every person convicted of a felony offense under Article 7 (@ 18.2-61 et seq.) of Chapter 4 of Title 18.2 who was incarcerated on July 1, 1989, shall have a sample of his blood taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. The analysis shall be performed by the Division of Forensic Science, Department of General Services. The identification characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the Division in a DNA data bank and shall be made available only as provided in @ 19.2-310.5.

After July 1, 1990, the blood sample shall be taken prior to release from custody.

Notwithstanding the provisions of @ 53.1-159, any person convicted of a felony who is in custody after July 1, 1990, shall provide a blood sample prior to his release. Every person so convicted after July 1, 1990, who is not sentenced to a term of confinement shall provide a blood sample as a condition of such sentence.

19.2-310.3. Procedures for withdrawal of blood sample for DNA analysis-

Each sample required pursuant to @ 19.2-310.2 from persons who are to be incarcerated shall be withdrawn at the receiving unit or at such other place as is designated by the Department of Corrections. The required samples from persons who are not sentenced to a term of confinement shall be withdrawn at a time and place specified by the sentencing court. Only a correctional health nurse technician or a physician, registered professional nurse, licensed practical nurse, graduate laboratory technician, or phlebotomist shall withdraw any sample to be submitted for analysis. No civil liability shall attach to any person authorized to withdraw blood as provided herein as a result of the act of withdrawing blood from any person submitting thereto, provided the blood was withdrawn according to recognized medical procedures. However, no person shall be relieved from liability for negligence in the withdrawing of any blood sample.

Chemically clean sterile disposable needles and vacuum draw tubes shall be used for all samples. The tube shall be sealed and labelled with the subject's name, social security number, date of birth, race and gender, the name of the person collecting the sample, the date and place of collection. The tubes shall be secured to prevent tampering with the contents. The steps herein set forth relating to the taking, handling, identification, and disposition of blood samples are procedural and not substantive. Substantial compliance therewith shall be deemed to be sufficient. The samples shall be transported to the Division of Forensic Science not more than fifteen days following withdrawal and shall be analyzed and stored in the DNA data bank in accordance with @@ 19.2-310.4 and 19.2-310.5.

HISTORY: 1990, c. 669.

19.2-310.4. Procedures for conducting DNA analysis of blood sample

Whether or not the results of an analysis are to be included in the data bank, the Division shall conduct the DNA analysis in accordance with procedures adopted by the Division to determine identification characteristics specific to the individual whose sample is being analyzed. The Director or his designated representative shall complete and maintain on file a form indicating the name of the person whose sample is to be analyzed, the date and by whom the blood sample was received and examined, and a statement that the seal on the tube had not been broken or otherwise tampered with. The remainder of a blood sample submitted for analysis and inclusion in the data bank pursuant to @ 19.2-310.2 may be divided, labeled as provided for the original sample, and securely stored by the Division in accordance with specific procedures adopted by regulation of the Division to ensure the integrity and confidentiality of the samples. All or part of the remainder of that sample may be used only (i) to create a statistical data base provided no identifying information on the individual whose sample is being analyzed is included or (ii) for retesting by the Division to validate or update the original analysis.

A report of the results of a DNA analysis conducted by the Division as authorized, including the profile and identifying information, shall be made and maintained at the Division. A certificate and the results of the analysis shall be admissible in any court as evidence of the facts therein stated. Except as specifically provided in this section and @ 19.2-310.5, the results of the analysis shall be securely stored and shall remain confidential.

HISTORY: 1990, c. 669.

19.2-310.5. DNA data bank exchange

It shall be the duty of the Division to receive blood samples and to analyze, classify, and file the results of DNA identification characteristics profiles of blood samples submitted pursuant to @19.2-310.2 and to make such information available as provided in this section. The results of an analysis and comparison of the identification characteristics from two or more blood samples shall be made available directly to federal, state and local law-enforcement officers upon request made in furtherance of an official investigation of any criminal offense. A request may be made by personal contact, mail, or electronic means. The name of the requestor and the purpose for which the information is requested shall be maintained on file with the Division.

Upon his request, a copy of the request for search shall be furnished to any person identified and charged with an offense as the result of a search of information in the data bank. Only when a sample or DNA profile supplied by the requestor satisfactorily matches a profile in the data bank shall the existence of data in the data bank be confirmed or identifying information from the data bank be disseminated.

The Division shall adopt regulations governing (i) the methods of obtaining information from the data bank in accordance with this section and (ii) procedures for verification of the identity and authority of the requestor. The Division shall specify the positions in that agency which require regular access to the data bank and samples submitted as a necessary function of the job.

The Division shall create a separate statistical data base comprised of DNA profiles of blood samples of persons whose identity is unknown. Nothing in this section or @ 19.2-310.6 shall

prohibit the Division from sharing or otherwise disseminating the information in the statistical data base with law-enforcement or criminal justice agencies within or without the Commonwealth.

The Division may charge a reasonable fee to search and provide a comparative analysis of DNA profiles in the data bank to any authorized law-enforcement agency outside of the Commonwealth.

HISTORY: 1990, c. 669.

19.2-310.6. Unauthorized uses of DNA data bank; forensic samples; penalties

Any person who, without authority, disseminates information contained in the data bank shall be guilty of a Class 3 misdemeanor. Any person who disseminates, receives, or otherwise uses or attempts to so use information in the data bank, knowing that such dissemination, receipt, or use is for a purpose other than as authorized by law, shall be guilty of a Class 1 misdemeanor.

Except as authorized by law, any person who, for purposes of having DNA analysis performed, obtains or attempts to obtain any sample submitted to the Division of Forensic Science for analysis shall be guilty of a Class 5 felony.

HISTORY: 1990, c. 669.

19.2-310.7. Expungement

A person whose DNA profile has been included in the data bank pursuant to this chapter may request expungement on the grounds that the felony conviction on which the authority for including his DNA profile was based has been reversed and the case dismissed. The Division shall purge all records and identifiable information in the data bank pertaining to the person and destroy all samples from the person upon receipt of (i) a written request for expungement pursuant to this section and (ii) a certified copy of the court order reversing and dismissing the conviction.

HISTORY: 1990, c. 669.

REVISED CODE OF WASHINGTON 1993

CHAPTER 43.43. WASHINGTON STATE PATROL 43.43.752

43.752. DNA identification system—Plan-Report

(1) To support criminal justice services in the local communities throughout this state, the state patrol in consultation with the University of Washington school of medicine shall develop a plan for and establish a DNA identification system. In implementing the plan, the state patrol shall purchase the appropriate equipment and supplies. The state patrol shall procure the most efficient equipment available.

(2) The DNA identification system as established shall be compatible with that utilized by the federal bureau of investigation.

(3) The state patrol and the University of Washington school of medicine shall report on the DNA identification system to the legislature no later than November 1, 1989. The report shall include a timeline for implementing each stage, a local agency financial participation analysis, a system analysis, a full cost/purchase analysis, a vendor bid evaluation, and a space location analysis that includes a site determination. The state patrol shall coordinate the preparation of this report with the office of financial management.

HISTORY: 1989 c 350 @ 2.

NOTES:

Finding-1989 c 350: "The legislature finds that recent developments in molecular biology and genetics have important applications for forensic science. It has been scientifically established that there is a unique pattern to the chemical structure of the deoxyribonucleic acid (DNA) contained in each cell of the human body. The process for identifying this pattern is called "DNA identification."

The legislature further finds that the accuracy of identification provided by this method is superior to that of any presently existing technique and recognizes the importance of this scientific breakthrough in providing a reliable and accurate tool for the investigation and prosecution of sex offenses as defined in *RCW 9.94A.030(26) and violent offenses as defined in **RCW 9.94A.030(29)." [1989 c 350 @ 1.]

43.43.752

Funding limitations—1989 c 350 "Any moneys received by the state from the federal bureau of justice assistance shall be used to conserve state funds if not inconsistent with the terms of the grant. To the extent that federal funds are available for the purposes of this act, state funds appropriated in this section shall lapse and revert to the general fund." [1989 c 350 @ 8.] For codification of "this act" [1989 c 350], see Codification Tables, Volume 0.

43.43.754. DNA identification system—Sex offenders, blood analysis

After July 1, 1990, every individual convicted in a Washington superior court of a felony defined as a sex offense under RCW 9.94A.030(29)(a) or a violent offense as defined in *RCW 9.94A.030(32) shall have a blood sample drawn for purposes of DNA identification analysis. For persons convicted of such offenses after July 1, 1990, who are serving a term of confinement in a county jail or detention facility, the county shall be responsible for obtaining blood samples prior to release from the county jail or detention facility. For persons convicted of such offenses after July 1, 1990, who are serving a term of confinement in a department of corrections facility, the department shall be responsible for obtaining blood samples prior to release from such facility. Any blood sample taken pursuant to RCW 43.43.752 through 43.43.758 shall be used solely for the purpose of providing DNA or other blood grouping tests for identification analysis and prosecution of a sex offense or a violent offense.

43.43.756. DNA identification system—Analysis, assistance, and testimony services

The state patrol in consultation with the University of Washington school of medicine may:

- (1) Provide DNA analysis services to law enforcement agencies throughout the state after July 1, 1990;
- (2) Provide assistance to law enforcement officials and prosecutors in the preparation and utilization of DNA evidence for presentation in court; and
- (3) Provide expert testimony in court on DNA evidentiary issues.

HISTORY: 1989 c 350 @ 5.

43.43.758. DNA identification system—Local law enforcement systems—Limitations

(1) Except as provided in subsection (2) of this section, no local law enforcement agency may establish or operate a DNA identification system before July 1, 1990, and unless:

- (a) The equipment of the local system is compatible with that of the state system under RCW 43.43.752;
- (b) The local system is equipped to receive and answer inquiries from the Washington state patrol DNA identification system and transmit data to the Washington state patrol DNA identification system; and
- (c) The procedure and rules for the collection, analysis, storage, expungement, and use of DNA identification data do not conflict with procedures and rules applicable to the state patrol DNA identification system.

(2) Nothing in this section shall prohibit a local law enforcement agency from performing DNA identification analysis in individual cases to assist law enforcement officials and prosecutors in the preparation and use of DNA evidence for presentation in court.

HISTORY: 1990 c 230 @ 2; 1989 c 350 @ 6.

43.43.759. DNA identification system-Rule-making requirements

The Washington state patrol shall adopt rules to implement RCW 43.43.752 through 43.43.758. The rules shall prohibit the use of DNA identification data for any research or other purpose that is not related to a criminal investigation or to improving the operation of the system authorized by RCW 43.43.752 through 43.43.758.

HISTORY: 1990 c 230 @ 1.

BASIC DNA GLOSSARY ACRONYMS

CODIS:	<u>C</u> o <u>m</u> bi <u>n</u> ed <u>D</u> NA <u>I</u> ndex <u>S</u> ystem
LDIS:	<u>L</u> ocal <u>D</u> atabase <u>I</u> ndex <u>S</u> ystem
LDAS:	<u>L</u> ocal <u>D</u> atabase <u>A</u> nalysis <u>S</u> ystem
NDIS:	<u>N</u> ational <u>D</u> atabase <u>I</u> ndex <u>S</u> ystem
NIST:	<u>N</u> ational <u>I</u> nstitute of <u>S</u> tandards and <u>T</u> echnology (DOC)
PCR:	<u>P</u> olymerase <u>C</u> hain <u>R</u> eaction
RFLP:	<u>R</u> estriction <u>F</u> ragment <u>L</u> ength <u>P</u> olymorphism
SDIS:	<u>S</u> tate <u>D</u> atabase <u>I</u> ndex <u>S</u> ystem
VNTR:	<u>V</u> ariable <u>N</u> umber of <u>T</u> andem <u>R</u> epeats

GLOSSARY OF TERMS

ALLELE:	Alternative form of a genetic locus (e.g., at a locus for eye color there might be alleles resulting in blue or brown eyes); alleles are inherited separately from each parent.
AUTORADIOGRAM:	An x-ray film image showing the position of radioactive substances. Sometimes called "autorad."
AUTORADIOGRAPH:	<i>See autoradiogram.</i>
BASE PAIR:	Two complementary nucleotides (adenine and thymine or guanine and cytosine) held together by weak bonds. Two strands of DNA are held together in the shape of a double helix by the bonds between base pairs.
DEOXYRIBONUCLEIC ACID (DNA):	The molecule that encodes genetic information. DNA is a double stranded helix held together by weak bonds between base pairs of nucleotides.
DNA BAND:	Referring to the visual image, e.g., on a autoradiogram or an ethidium bromide stained gel, that represents a particular DNA fragment.
DNA PROBE:	Short segment of DNA that is labeled with a radioactive or other chemical tag and then used to detect the presence of a particular DNA sequence through hybridization to its complementary sequence.
DNA SEQUENCE:	Order of nucleotide bases in DNA.
ELECTROPHORESIS:	Technique used to separate molecules such as DNA fragments or proteins. In forensic uses of DNA tests, electric current is passed through a gel, usually composed of a substance called agarose, and the fragments of DNA are separated by size. Smaller fragments will migrate farther than larger pieces.
ENZYME:	A protein that acts as a catalyst, speeding the rate at which a biochemical reaction proceeds, without being permanently altered or consumed by the reaction so that it can be used repeatedly.
GEL:	The semi-solid matrix used in electrophoresis to separate molecules. In forensic DNA analysis, the substance usually used is agarose, although acrylamide can also be used.
LOCUS:	A specific, physical position on a chromosome.
MARKER:	A gene with a known location on a chromosome and a clear-cut phenotype that is used as a point of reference when mapping another locus;

or, referring to DNA fragments of known base pair length run on gels from which the size of unknown DNA sample fragments can be determined.

**POLYMERASE CHAIN
REACTION (PCR):**

An in vitro process, through which repeated cycling of the reaction reproduces a specific region of DNA, yielding millions of copies from the original.

PROBE:

In forensic applications, a short segment of DNA tagged with a reporter molecule, such as radioactive phosphorus (P), used to detect the presence of that particular complementary DNA sequence.

**RESTRICTION
ENDONUCLEASE:**

An enzyme that has the ability to recognize a specific DNA sequence and cut it at that sequence.

**RESTRICTION
ENZYME:**

See restriction endonuclease.

**RESTRICTION FRAGMENT
LENGTH POLYMORPHISM
(RFLP):**

Variations in the size of DNA fragments produced by a restriction endonuclease at a polymorphic locus.

RFL ANALYSIS:

DNA technique using single-locus or multi-locus probes to detect variations in the DNA sequence by revealing size differences in DNA fragments produced by the action of a restriction enzyme. *See restriction fragment length polymorphism.*

**SOUTHERN
BLOTTING:**

The technique for transferring DNA fragments separated by electrophoresis from the gel to a nylon membrane, to which DNA probes that detect specific fragments can then be applied.

**SHORT TANDEM
REPEATS (STR):**

A special class of VNTRs consisting of repeated core units, each composed of four to six bases.

STANDARDS:

Criteria established for quality control and quality assurance; or, known test reagents, such as molecular weight standards.

**VARIABLE NUMBER OF
TANDEM REPEATS
(VNTR):**

Repeating units of a core DNA sequence, for which the core number varies between individuals, thus providing the basis for RFLP analysis.

BIBLIOGRAPHY

America Encyclopedia, Nucleic Acid.

Amplitype User Guide, Version 2 (Emeryville, CA: Cetus Corp., 1990)

Leom Jaroff, "Happy Birthday Double Helix," Time, March 15, 1993, p 70.

Office of Technology Assessment, GW, Note 1, p.42.

People v. Axell, 235 Cal. App.3d 836 (Ct. App. 1991)

People v. Barney, 8 Cal. App. 4th 798 (Ct. App. 1992)

State v. Pierce, 64 Ohio St. 3d 490 (1992)

United States v. Bonds, 12F.3d 540 (6th Cir. 1993),

United States v. Yee, 134 F.R.D. 161 (N.D. Ohio 1991)

U.S. Congress, Office of Technology Assessment, Genetic Witness: Forensic Use of DNA Tests, OTA-BA-438 (Washington, D.C.: U.S. Gov't Printing Office, July 1990)

U.S. Dept. of Justice, Forensic DNA Analysis: Issues, June, 1991, NCJ-128567, p.5.

352 U.S., 432, 436 (1957)

387 U.S., 523, 536-537 (1987)

583 N.Y. 52d, 643, 659 (Albany County, Ct, 1988)

