

House BILL NO. 191

INTRODUCED BY

Rep. Gaylon Nasolo

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN SEX OFFENDERS TO PROVIDE DNA SAMPLES; GRANTING THE DEPARTMENT OF JUSTICE THE AUTHORITY TO PROMULGATE RULES; PROVIDING THAT DNA RECORDS ARE CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; ESTABLISHING A DNA IDENTIFICATION INDEX WITHIN THE DEPARTMENT OF JUSTICE TO MAINTAIN DNA RECORDS; ESTABLISHING USES FOR DNA RECORDS; PROVIDING THAT DNA RECORDS ARE NOT SEALED UNDER THE YOUTH COURT ACT; AMENDING SECTION 41-5-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance concerning rules adopted for the withdrawal of blood samples for DNA testing.

It is the intent of the legislature that rules adopted by the department of justice will ensure that blood collections under this bill will be conducted in a manner so that the health and welfare of the donor and testing personnel are not compromised.

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Department" means the department of justice.

(2) "DNA" means deoxyribonucleic acid.

(3) "DNA identification index" means the DNA identification record system established under [section 2].

(4) "DNA record" means DNA identification information stored in the DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form

1 of the results of a DNA analysis; for example, the numerical representation of DNA fragment lengths,
2 autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

3 (5) "DNA testing" means DNA analysis of materials derived from the human body for the purposes
4 of identification consistent with [sections 1 through 7].

5 (6) "Forensic DNA laboratory" means any laboratory operated by state government that performs
6 DNA testing on materials derived from the human body for use as evidence in a criminal proceeding or for
7 purposes of identification.

8 (7) "Marker" means a method of describing individuals by genetic profile, such as blood or DNA
9 type, and has the specific meaning given to the word by department rule, which must take into account
10 the meaning generally given to the word for forensic typing by DNA technologists.

11

12 **NEW SECTION. Section 2. Establishment of DNA identification index.** (1) The department shall
13 establish a computerized DNA identification index for the receipt, storage, and exchange of DNA records.
14 The DNA identification index is the central repository for DNA records in the state of Montana.

15 (2) The DNA identification index must include:

16 (a) DNA records for any individual convicted of a sexual offense, as defined in 46-23-502; and

17 (b) analyses of DNA samples recovered from crime scenes, medical examinations, and unidentified
18 human remains. For purposes of identification of missing persons, the DNA identification index may include
19 DNA records of close biological relatives of a missing person.

20 (3) The DNA identification index and the DNA testing done by a forensic DNA laboratory must be
21 compatible with the systems of DNA identification used by other criminal justice agencies or private testing
22 laboratories to the extent necessary to permit the exchange of DNA information.

23 (4) The DNA records collected and stored in the DNA identification index may contain only
24 information relating to the identification of individuals. Information that identifies a person that is the
25 subject of a record must be limited to the information that is necessary to pursue criminal investigations
26 and support statistical interpretation of results.

27 (5) The DNA identification index may be used:

28 (a) by law enforcement agencies for purposes of identification in the course of criminal
29 investigations and proceedings;

30 (b) to assist in the identification of human remains, including identification of missing persons; and

1 (c) if information allowing persons to be identified is removed, for a population statistics data base
2 and for identification, research, and protocol development for forensic DNA analysis and quality control.
3

4 **NEW SECTION. Section 3. Collection of samples and maintenance of data.** (1) Following entry
5 of judgment, a person convicted of a sexual offense or found under 41-5-521 to have committed a sexual
6 offense as defined in 46-23-502 shall provide to a person or entity designated by the county attorney a
7 sample of blood for DNA analysis to determine identification characteristics specific to the person.

8 (2) The blood sample must be collected, stored, and sent by the person or entity designated by
9 the county attorney under subsection (1) to the department for entry in the DNA identification index in
10 accordance with rules adopted by the department with the advice of the department of health and
11 environmental sciences.

12 (3) A forensic DNA laboratory may perform DNA analysis for only those markers that have value
13 for law enforcement identification purposes.
14

15 **NEW SECTION. Section 4. Release of DNA records.** (1) The DNA records contained in the DNA
16 identification index may be released only for the following purposes:

17 (a) to federal, state, and local law enforcement agencies for law enforcement identification
18 purposes;

19 (b) for criminal defense purposes, to a defendant for whom there is a DNA record, who is also
20 entitled to samples and analyses held as part of the record;

21 (c) to assist in the identification of human remains, including missing persons; and

22 (d) if information allowing persons to be identified is removed, for a population statistics data base
23 and for identification, research, and protocol development for forensic DNA analysis and quality control.

24 (2) Requests for DNA records must be in writing, signed by the requesting party, and maintained
25 on file in the DNA identification index in accordance with rules adopted by the department.

26 (3) A defendant in a criminal proceeding is entitled to information in the DNA identification index
27 relating to the number of requests previously made for comparison searches relating to the defendant and
28 the names of the requesting parties.
29

30 **NEW SECTION. Section 5. Expungement of DNA records.** If a conviction of a sexual offense is

1 reversed, the DNA record relating to the offense must be expunged from the DNA identification index. The
2 county attorney of the county in which the conviction occurred shall notify the department of a reversal
3 of a conviction for a sexual offense.

4
5 **NEW SECTION. Section 6. Confidentiality of records of DNA testing.** Except as provided in
6 [sections 1 through 7] or unless the person that they relate to consents to their release, records, findings,
7 and results of DNA testing are confidential criminal justice information subject to the dissemination
8 provisions of Title 44, chapter 5.

9
10 **NEW SECTION. Section 7. Rulemaking authority.** The department shall adopt rules to implement
11 [sections 1 through 7].

12
13 **Section 8.** Section 41-5-604, MCA, is amended to read:

14 **"41-5-604. Disposition of records.** (1) All youth court records and law enforcement records except
15 fingerprints, DNA records, and photographs pertaining to a youth ~~coming under~~ covered by this chapter
16 ~~shall~~ must be physically sealed when the youth reaches ~~the age of~~ 18 years of age.

17 (2) In those cases in which jurisdiction of the court or any agency is ~~extended~~ beyond the youth's
18 18th birthday, the ~~above~~ records and files ~~shall~~ listed in subsection (1) must be physically sealed upon
19 termination of the extended jurisdiction.

20 (3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any
21 agency or department that has in its possession copies of the records ~~so sealed~~ shall also seal or destroy
22 ~~such~~ the copies of records. Anyone violating the provisions of this subsection ~~shall be~~ is subject to
23 contempt of court.

24 (4) Nothing ~~herein~~ contained in this section shall prohibit ~~prohibits~~ the destruction of ~~such~~ records
25 with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

26 (5) The requirements for sealed records in this section ~~shall do~~ not apply to youth traffic records
27 or to records directly related to an offense to which access must be allowed under 41-5-601."

28
29 **NEW SECTION. Section 9. Effective date.** [This act] is effective on passage and approval.

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STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0191, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring certain sex offenders to provide DNA samples, granting the Department of Justice the authority to establish a DNA identification index.

ASSUMPTIONS:

1. During fiscal years 1990-1994, prison admissions for offenders convicted of the sex crimes defined in this bill averaged 88.4 per year. The DNA testing workload for the Forensic Science Division of the Department of Justice is estimated at 200 cases per year.
2. There are 2.00 FTE forensic scientists needed to implement the bill. These are to be grade 17 with pay exceptions at a cost of \$50,079 each, including benefits. Twgdam guidelines, from the national working group of DNA specialists, require a minimum of 2.00 FTE forensic scientists to have a recognized certifiable DNA lab.
3. The Forensic Science Division has no room to expand in its current space. New space of 5,000 square feet is available at St. Patrick's Hospital in Missoula adjoining the present lab. The entire 5,000 feet must be rented although the DNA testing may require only three rooms and about 1,500 square feet. The rental cost of the remodeled space would be \$6.21/sq. ft., the same as the current space of the division (5,000 x \$6.21 = \$31,050).
4. The estimated cost to remodel 1,500 square feet at \$75/sq. ft. is \$112,500. This cost is included in FY96 only.
5. The other operating expenses are annual and include travel, training, and supplies.
6. Specialized equipment necessary for DNA testing is estimated to cost \$50,822. The equipment would be purchased in FY96 only.
7. The availability of federal funds, if any, is unknown. It is assumed that general fund is the funding source.

FISCAL IMPACT:

Forensic Science Division:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
FTE	2.00	2.00
Personal Services	100,158	100,158
Operating Costs	155,200	73,700
Equipment	<u>50,822</u>	<u>0</u>
Total	306,180	173,858

Funding:

General Fund (01)	306,180	173,858
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LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The Forensic Science Division would start collecting and storing samples immediately upon passage and approval. However, no significant analysis would be completed until FY98 as it takes approximately two years to become fully operational.

Dave Lewis 1-20-95
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Gay Ann Masolo
 GAY ANN MASOLO, PRIMARY SPONSOR DATE

Fiscal Note for HB0191, as introduced

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