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House BILL NO. 551

INTRODUCED BY Clark

BY REQUEST OF THE HOUSE JUDICIARY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN SEXUAL AND VIOLENT OFFENDERS TO PROVIDE DNA SAMPLES; 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 MONTANA 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 that will not compromise the health and welfare of the donor and testing personnel.

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 provided for in 2-15-2001.

(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 of the results of a DNA analysis, such as the numerical representation of DNA fragment lengths,

1 autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

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

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

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

10 (8) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.

11 (9) "Violent offense" means an offense contained in 45-5-102, 45-5-103, 45-5-202, 45-5-302,
12 45-5-303, 45-5-401, or 45-6-103 or an equivalent offense under federal law or the law of another state.

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

17 (2) The DNA identification index must include:

18 (a) DNA records for an individual convicted of a sexual or violent offense; and

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

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

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

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

30 (a) by law enforcement agencies for purposes of identification in the course of criminal

1 investigations and proceedings;

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

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

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

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

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

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18 DNA identification index may be released only for the following purposes:

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22 entitled to samples and analyses held as part of the record;

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25 and for identification, research, and protocol development for forensic DNA analysis and quality control.

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

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

1 NEW SECTION. **Section 5. Expungement of DNA records.** If a conviction of a sexual or violent
 2 offense is reversed, the record relating to the offense must be expunged from the DNA identification index.
 3 The county attorney of the county in which the conviction occurred shall notify the department of a
 4 reversal of a conviction for a sexual or violent offense.

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 7 [sections 1 through 7] or unless the person that they relate to consents to their release, records, findings,
 8 and results of DNA testing are confidential criminal justice information subject to the dissemination
 9 provisions of Title 44, chapter 5.

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 12 handling, collection, transportation, sampling, and storage of blood samples and to further define the term
 13 "marker". The rules concerning the handling of blood samples must ensure protection of the health of
 14 persons who may come into contact with the samples.

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

17 "**41-5-604. Disposition of records.** (1) All youth court records and law enforcement records, except
 18 fingerprints, DNA records, and photographs pertaining to a youth ~~coming under~~ covered by this chapter,
 19 ~~shall~~ must be physically sealed when the youth reaches ~~the age of~~ 18 years of age.

20 (2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's
 21 18th birthday, the ~~above~~ records and files ~~shall~~ listed in subsection (1) must be physically sealed upon
 22 termination of the extended jurisdiction.

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

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

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

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0551, 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:

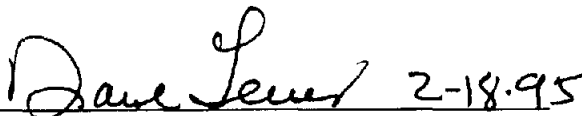
Forensic Science Div.:	<u>FY96</u>	<u>FY97</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
FTE	2.00	2.00
Personal Services	100,158	100,158
Operating Costs	155,200	73,700
Equipment	<u>50,822</u>	<u>0</u>
Total	306,180	173,858
 <u>Funding:</u>		
General Fund (01)	306,180	173,858


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.

TECHNICAL NOTES:

This fiscal note for HB551 is comparable to the fiscal note for HB191.


 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning


 ROBERT CLARK, PRIMARY SPONSOR DATE

Fiscal Note for HB0551, as introduced
HB 551

House BILL NO. 551

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7 [sections 1 through 7] or unless the person that they relate to consents to their release, records, findings,
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12 handling, collection, transportation, sampling, and storage of blood samples and to further define the term
13 "marker". The rules concerning the handling of blood samples must ensure protection of the health of
14 persons who may come into contact with the samples.

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

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18 fingerprints, DNA records, and photographs pertaining to a youth ~~coming under~~ covered by this chapter,
19 ~~shall~~ must be physically sealed when the youth reaches ~~the age of~~ 18 years of age.

20 (2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's
21 18th birthday, the ~~above~~ records and files ~~shall~~ listed in subsection (1) must be physically sealed upon
22 termination of the extended jurisdiction.

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24 agency or department that has in its possession copies of the records ~~so sealed~~ shall also seal or destroy
25 ~~such~~ the copies of records. Anyone violating the provisions of this subsection ~~shall be~~ is subject to
26 contempt of court.

27 (4) Nothing ~~herein~~ contained in this section shall prohibit prohibits the destruction of ~~such~~ records
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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

1 HOUSE BILL NO. 551

2 INTRODUCED BY CLARK, BOHARSKI, AHNER, MASOLO, L. SMITH, TASH, SOFT, MCGEE, MOLNAR,
 3 CURTISS, MARTINEZ, ARNOTT, HOLLAND, ELLIS, TREXLER, GRIMES, ANDERSON, KOTTEL,
 4 MCCULLOCH, LARSON, PAVLOVICH, REAM, MCCANN, FUCHS, FELAND, ROSE, J. JOHNSON,
 5 HURDLE, RYAN, MERCER, REHBEIN, KADAS, CAREY
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6 NEW SECTION. Section 9. Report to legislature. The department of justice shall report to the 56th
7 legislature on the success of the program created by [sections 1 through 7], including the number of
8 samples analyzed and the number of cases successfully prosecuted using the DNA identification index
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10
11 NEW SECTION. Section 10. Coordination instruction. If the 54th legislature does not appropriate
12 money to fund administration of [this act] by a line item or other appropriation specifically referring to the
13 program contained in [this act], then [this act] is void.

14
15 NEW SECTION. Section 11. Effective date. [This act] is effective on passage and approval.

16 -END-