

Item # 11A

**City of Carson City
Agenda Report**

Date Submitted: 2-24-09

Agenda Date Requested: 3-5-09

Time Requested: 5 minutes

To: Carson City Board of Supervisors

From: District Attorney's Office

Subject Title: ACTION TO INTRODUCE ON FIRST READING, BILL NO. _____, AN ORDINANCE AMENDING CARSON CITY MUNICIPAL CODE TITLE 9 HEALTH AND WELFARE, BY ADDING CHAPTER 9.14, FUND FOR GENETIC MARKER TESTING, ADDING SECTION 9.14.010 CREATION OF FUND FOR GENETIC MARKER TESTING, WHICH CREATES A FUND IN THE COUNTY TREASURY FOR GENETIC MARKER TESTING FEES, ADDING SECTION 9.14.020 DEPOSIT OF MONEY INTO FUND FOR GENETIC MARKER TESTING, WHICH REQUIRES THE TREASURER TO DEPOSIT MONEY COLLECTED FOR GENETIC MARKER TESTING INTO THE FUND, ADDING SECTION 9.14.030 USE AND DISTRIBUTION OF MONEY IN FUND FOR GENETIC MARKER TESTING, WHICH DEFINES HOW THE MONEY IS USED AND DISTRIBUTED IN THE FUND AND OTHER MATTERS PROPERLY RELATED THERETO.

Staff Summary: Nevada Revised Statute (NRS) 176.0913 requires certain criminal offenders to provide biological specimens for an analysis to determine the genetic markers of the specimens. NRS 176.0915 requires a court to impose a fee of up to \$150.00 for conducting the analysis. The money must be deposited with the county treasurer, and the Board of Supervisors is required to adopt an ordinance creating the fund in which the money will be deposited.

Type of Action Requested:

(check one)

☐ Resolution

☒ Ordinance (First Reading)

☐ Formal Action/Motion

☐ Other (Specify)

Does This Action Require A Business Impact Statement: ☐ Yes ☒ No

Recommended Board Action: I MOVE TO INTRODUCE ON FIRST READING, BILL NO. _____, AN ORDINANCE AMENDING CARSON CITY MUNICIPAL CODE TITLE 9 HEALTH AND WELFARE, BY ADDING CHAPTER 9.14, FUND FOR GENETIC MARKER TESTING, ADDING SECTION 9.14.010 CREATION OF FUND FOR GENETIC MARKER TESTING, WHICH CREATES A FUND IN THE COUNTY TREASURY FOR GENETIC MARKER TESTING FEES, ADDING SECTION 9.14.020 DEPOSIT OF MONEY INTO FUND FOR GENETIC MARKER TESTING, WHICH REQUIRES THE TREASURER TO DEPOSIT MONEY COLLECTED FOR GENETIC MARKER TESTING INTO THE FUND, ADDING SECTION 9.14.030 USE AND DISTRIBUTION OF MONEY IN FUND FOR GENETIC

MARKER TESTING, WHICH DEFINES HOW THE MONEY IS USED AND DISTRIBUTED IN THE FUND AND OTHER MATTERS PROPERLY RELATED THERETO.

Explanation for Recommended Board Action: Nevada Revised Statute (NRS) 176.0913 requires certain criminal offenders to provide biological specimens for an analysis to determine the genetic markers of the specimens. NRS 176.0915 requires a court to impose a fee of up to \$150.00 for conducting the analysis. The money must be deposited with the county treasurer, and the Board of Supervisors is required to adopt an ordinance creating the fund in which the money will be deposited.

Applicable Statute, Code, Policy, Rule or Regulation: NRS Chapter 176

Fiscal Impact: N/A

Funding Source: N/A

Supporting Material: NRS 176.0913, 176.0915, Proposed Ordinance

Prepared By: Melanie Bruketta, Chief Deputy D.A.

REVIEWED BY:



(City Manager)

Date: 2/24/09



(District Attorney)

Date: 2-23-09



(Finance Director)

Date: 2-24-09

Board Action Taken:

Motion: _____	1) _____	Aye/Nay
	2) _____	_____

(Vote Recorded By)

testing were not based on any evidence. Thus, the court held that NRS 176.0913 was not unconstitutionally overbroad. *Gaines v. State*, 116 Nev. 359, 998 P.2d 166 (2000), cited, *Williams v. State*, 118 Nev. 536, at 542, 50 P.3d 1116 (2002)

The section does not constitute cruel and unusual punishment in violation of the U.S. 8th amendment. Where a defendant who was subject to genetic marker testing pursuant to NRS 176.0913 argued that this requirement constituted cruel and unusual punishment in violation of the U.S. 8th amendment (see Nev. Art. 1, § 6) because it essentially constituted scientific experimentation and might result in the use of excessive force, the supreme court rejected the defendant's argument and held that because the taking of blood samples for the genetic marker testing, if properly performed, is not barbarous, does not involve wanton physical punishment, is not an unduly extensive imposition and is not considered offensive by even the most delicate person, the genetic marker testing does not constitute cruel and unusual punishment in violation of the U.S. 8th amendment. *Gaines v. State*, 116 Nev. 359, 998 P.2d 166 (2000)

NRS 176.0913 Biological specimen to be obtained from certain defendants; identifying information submitted to Central Repository; costs. [Effective July 1, 2008.]

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

(a) The name, social security number, date of birth and any other information identifying the defendant be submitted to the Central Repository for Nevada Records of Criminal History; and

(b) A biological specimen be obtained from the defendant pursuant to the provisions of this section and that the specimen be used for an analysis to determine the genetic markers of the specimen.

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

3. If the defendant is not committed to the custody of the Department of Corrections, the Division shall arrange for the biological specimen to be obtained from the defendant. The Division shall provide the specimen to the forensic laboratory that has been designated by the county in which the defendant was convicted to conduct or oversee genetic marker testing for the county pursuant to NRS 176.0917. Any cost that is incurred to obtain a biological specimen from a defendant pursuant to this subsection is a charge against the county in which the defendant was convicted and must be paid as provided in NRS 176.0915.

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

(a) A felony;

(b) A crime against a child as defined in NRS 179D.0357;

(c) A sexual offense as defined in NRS 179D.097;

(d) Abuse or neglect of an older person or a vulnerable person pursuant to NRS 200.5099;

(e) A second or subsequent offense for stalking pursuant to NRS 200.575;

(f) An attempt or conspiracy to commit an offense listed in paragraphs (a) to (e), inclusive;

(g) Failing to register with a local law enforcement agency as a convicted person as required pursuant to NRS 179C.100, if the defendant previously was:

(1) Convicted in this State of committing an offense listed in paragraph (a), (d), (e) or (f); or

(2) Convicted in another jurisdiction of committing an offense that would constitute an offense listed in paragraph (a), (d), (e) or (f) if committed in this State;

(h) Failing to register with a local law enforcement agency after being convicted of a crime against a child as required pursuant to NRS 179D.450; or

(i) Failing to register with a local law enforcement agency after being convicted of a sexual offense as required pursuant to NRS 179D.450.

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

6. Except as otherwise authorized by federal law or by specific statute, a biological specimen obtained pursuant to this section, the results of a genetic marker analysis and any information identifying or matching a biological specimen with a person must not be shared with or disclosed to any person other than the authorized personnel who have possession and control of the biological specimen, results of a genetic marker analysis or information identifying or matching a biological specimen with a person, except pursuant to:

(a) A court order; or

(b) A request from a law enforcement agency during the course of an investigation.

7. A person who violates any provision of subsection 6 is guilty of a misdemeanor.

(Added to NRS by 1989, 376; A 1995, 414; 1997, 1669; 2001, 1852, 3032, 3037; 2001 Special Session, 215; 2003, 289, 2684; 2005, 1115; 2007, 749, 2745, effective July 1, 2008)

NRS 176.0915 Fee for obtaining biological specimen and for testing; inclusion in sentence; creation of county fund; use of money in fund.

1. If the court orders that a biological specimen be obtained from a defendant pursuant to NRS 176.0913, the court, in addition to any other penalty, shall order the defendant, to the extent of his financial ability, to pay the sum of \$150 as a fee for obtaining the specimen and for conducting the analysis to determine the genetic markers of the specimen. The fee:

(a) Must be stated separately in the judgment of the court or on the docket of the court;

(b) Must be collected from the defendant before or at the same time that any fine imposed by the court is collected from the defendant; and

(c) Must not be deducted from any fine imposed by the court.

2. All money that is collected pursuant to subsection 1 must be paid by the clerk of the court to the county treasurer on or before the fifth day of each month for the preceding month.

3. The board of county commissioners of each county shall by ordinance create in the county treasury a fund to be designated as the fund for genetic marker testing. The county treasurer shall deposit money that is collected pursuant to subsection 2 in the fund for genetic marker testing. The money must be accounted for separately within the fund.

4. Each month, the county treasurer shall use the money deposited in the fund for genetic marker testing to pay for the actual amount charged to the county for obtaining a biological specimen from a defendant pursuant to NRS 176.0913.

5. If money remains in the fund after the county treasurer makes the payments required by subsection 4, the county treasurer shall pay the remaining money each month to the forensic laboratory that is designated by the county pursuant to

NRS 176.0917 to conduct or oversee genetic marker testing for the county. A forensic laboratory that receives money pursuant to this subsection shall use the money to:

(a) Maintain and purchase equipment and supplies relating to genetic marker testing, including, but not limited to, equipment and supplies required by the Federal Bureau of Investigation for participation in CODIS; and

(b) Pay for the training and continuing education, including, but not limited to, the reasonable travel expenses, of employees of the forensic laboratory who conduct or oversee genetic marker testing.

(Added to NRS by 1997, 1668; A 2001, 3033)

NRS 176.0916 Biological specimen to be obtained from certain probationers and parolees; release of information; penalty; fee for obtaining and testing specimen; identifying information submitted to Central Repository; creation of Fund for Genetic Marker Testing; use of money in Fund.

1. If the Division is supervising a probationer or parolee pursuant to an interstate compact and the probationer or parolee is or has been convicted in another jurisdiction of violating a law that prohibits the same or similar conduct as an offense listed in subsection 4 of NRS 176.0913, the Division shall arrange for a biological specimen to be obtained from the probationer or parolee.

2. After a biological specimen is obtained from a probationer or parolee pursuant to this section, the Division shall:

(a) Provide the biological specimen to the forensic laboratory that has been designated by the county in which the probationer or parolee is residing to conduct or oversee genetic marker testing for the county pursuant to NRS 176.0917; and

(b) Submit the name, social security number, date of birth and any other information identifying the probationer or parolee to the Central Repository.

3. Except as otherwise authorized by federal law or by specific statute, a biological specimen obtained pursuant to this section, the results of a genetic marker analysis and any information identifying or matching a biological specimen with a person must not be shared with or disclosed to any person other than the authorized personnel who have possession and control of the biological specimen, results of a genetic marker analysis or information identifying or matching a biological specimen with a person, except pursuant to:

(a) A court order; or

(b) A request from a law enforcement agency during the course of an investigation.

4. A person who violates any provision of subsection 3 is guilty of a misdemeanor.

5. A probationer or parolee, to the extent of his financial ability, shall pay the sum of \$150 to the Division as a fee for obtaining the biological specimen and for conducting the analysis to determine the genetic markers of the biological specimen. Except as otherwise provided in subsection 6, the fee required pursuant to this subsection must be collected from a probationer or parolee at the time the biological specimen is obtained from the probationer or parolee.

6. A probationer or parolee may arrange to make monthly payments of the fee required pursuant to subsection 5. If such arrangements are made, the Division shall provide a probationer or parolee with a monthly statement that specifies the date on which the next payment is due.

7. Any unpaid balance for a fee required pursuant to subsection 5 is a charge against the Division.

ORDINANCE NO. _____

BILL NO. _____

AN ORDINANCE AMENDING CARSON CITY MUNICIPAL CODE TITLE 9 HEALTH AND WELFARE, BY ADDING CHAPTER 9.14, FUND FOR GENETIC MARKER TESTING, ADDING SECTION 9.14.010 CREATION OF FUND FOR GENETIC MARKER TESTING, WHICH CREATES A FUND IN THE COUNTY TREASURERY FOR GENETIC MARKER TESTING, ADDING SECTION 9.14.020 DEPOSIT OF MONEY INTO FUND FOR GENETIC MARKER TESTING, WHICH REQUIRES THE TREASURER TO DEPOSIT MONEY COLLECTED FOR GENETIC MARKER TESTING INTO THE FUND, ADDING SECTION 9.14.030 USE AND DISTRIBUTION OF MONEY IN FUND FOR GENETIC MARKER TESTING, WHICH DEFINES HOW THE MONEY IS USED AND DISTRIBUTED IN THE FUND AND OTHER MATTERS PROPERLY RELATED THERETO.

THE BOARD OF SUPERVISORS OF CARSON CITY DO ORDAIN:

SECTION I:

That Chapter 9.14, Fund for Genetic Marker Testing of the Carson City Municipal Code is hereby added as follows:

Title 9, HEALTH AND WELFARE

Chapter:

Chapter 9.01 CARSON CITY BOARD OF HEALTH

Chapter 9.04 HEALTH DIVISION PERMITS AND FEE SCHEDULE

Chapter 9.05 FOOD ESTABLISHMENTS

Chapter 9.06 AIR POLLUTION REGULATIONS

Chapter 9.07 LICENSING OF POOL OPERATORS

Chapter 9.08 HUMAN SERVICES AND EMPLOYEE HEALTH DEPARTMENT

Chapter 9.09 AID TO VICTIMS OF SEXUAL ASSAULT

Chapter 9.10 CARNIVALS AND AMUSEMENT RIDES

Chapter 9.11 IMITATION CONTROLLED SUBSTANCES

Chapter 9.12 FAIR HOUSING

Chapter 9.13 CARSON CITY CORONER

Chapter 9.14 FUND FOR GENTIC MARKER TESTING

SECTION II:

1 That Section 9.14.010 of the Carson City Municipal Code is hereby added as follows:
2 9.14.010 Creation of Fund For Genetic Marker Testing

3 There is hereby created a revenue account and an expenditure account in the Carson City
4 general fund to be designated as the fund for genetic marker testing.

5 SECTION III:

6 That Section 9.14.020 of the Carson City Municipal Code is hereby added as follows:

7 9.14.020 Deposit of money into fund For Genetic Marker Testing

8 The county treasurer shall deposit money that is collected pursuant to Nevada Revised
9 Statutes 176.0915, as may be amended, in the fund for genetic marker testing. The money
10 must be accounted for separately within the fund.

11 SECTION IV:

12 That Section 9.14.030 of the Carson City Municipal Code is hereby added as follows:

13 9.14.030 Use And Distribution of Money in Fund For Genetic Marker Testing

14 1. Each month, the county treasurer shall use the money deposited in the fund for genetic
15 marker testing to pay the actual amount charged to the county for obtaining biological
16 specimens from a defendant pursuant to Nevada Revised Statutes 176.0913.

17 2. If money remains in the fund after the county treasurer makes the payments required by
18 subsection (1) of this section, the county treasurer shall pay the remaining money each month
19 to the forensic laboratory that is designated by the Board of Supervisors pursuant to NRS
176.0917 to conduct or oversee genetic marker testing for Carson City. A forensic laboratory
that receives money pursuant to this subsection shall use the money to:

20 (a) Maintain and purchase equipment and supplies relating to genetic marker testing,
21 including, but not limited to, equipment and supplies required by the Federal Bureau of
Investigation for participation in CODIS; and

22 (b) Pay for the training and continuing education, including, but not limited to, the
23 reasonable travel expenses, of employees of the forensic laboratory who conduct or oversee
24 genetic marker testing.

25 SECTION VI:

26 That no other provisions of Title 9 are affected by this ordinance.

27 PROPOSED on ____ (month) ____ (day), 2009

28 PROPOSED by Supervisor _____.

PASSED _____(month) _____(day), 2009.

VOTE:

AYES:

NAYES:

ABSENT:

ATTEST:

ALAN GLOVER, Clerk/Recorder

ROBERT CROWELL, Mayor

This ordinance shall be in force and effect from and after the _____ day of the month of _____ of the year 2009.