

## CHAPTER 295

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**CRIMINAL LAW AND PROCEDURE**

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**SENATE BILL 09-241**

BY SENATOR(S) Morse, Kopp, Newell, Penry, Romer, White;  
also REPRESENTATIVE(S) King S. and Tipton, Balmer, Baumgardner, Gerou, Labuda, Liston, Looper, Marostica, Summers,  
Swalm, Waller, Acree, Bradford, Casso, Curry, Gardner B., Kerr J., Lambert, Peniston, Priola, Scanlan.

**AN ACT**

**CONCERNING DNA TESTING OF ADULTS ARRESTED FOR A FELONY, AND MAKING AN APPROPRIATION THEREFOR.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** Title 16, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

**ARTICLE 23****DNA Crime Prevention and Exoneration of the Innocent Act**

**16-23-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS "KATIE'S LAW".

**16-23-102. Legislative declaration.** (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) THE COLLECTION AND USE OF DNA BY LAW ENFORCEMENT AGENCIES IS A VALUABLE TOOL IN PREVENTING CRIME;

(b) THE ANALYSIS OF DNA HAS BEEN USED NUMEROUS TIMES IN THE EXONERATION OF INNOCENT INDIVIDUALS CHARGED WITH OR CONVICTED OF CRIMES; AND

(c) THE IMPLEMENTATION OF THIS ARTICLE WILL RESULT IN PREVENTING A SIGNIFICANT NUMBER OF VIOLENT CRIMES IN COLORADO AND IN SOLVING A NUMBER OF UNSOLVED CRIMES IN COLORADO.

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

**16-23-103. Collection of biological samples from persons arrested for or charged with felonies.** (1) THE FOLLOWING PERSONS SHALL SUBMIT TO COLLECTION OF A BIOLOGICAL SUBSTANCE SAMPLE FOR TESTING TO DETERMINE THE GENETIC MARKERS THEREOF, UNLESS THE PERSON HAS PREVIOUSLY PROVIDED A BIOLOGICAL SUBSTANCE SAMPLE FOR SUCH TESTING PURSUANT TO A STATUTE OF THIS STATE AND THE COLORADO BUREAU OF INVESTIGATION HAS THAT SAMPLE:

(a) EVERY ADULT ARRESTED ON OR AFTER SEPTEMBER 30, 2010, FOR A FELONY OFFENSE OR FOR THE INVESTIGATION OF A FELONY OFFENSE. THE ARRESTING LAW ENFORCEMENT AGENCY SHALL COLLECT THE BIOLOGICAL SUBSTANCE SAMPLE FROM THE ARRESTED PERSON AS PART OF THE BOOKING PROCESS.

(b) (I) EVERY ADULT WHO IS CHARGED WITH A FELONY BY AN INDICTMENT, INFORMATION, OR FELONY COMPLAINT FILED ON OR AFTER SEPTEMBER 30, 2010, AND WHO IS NOT ARRESTED IN CONNECTION WITH THE FELONY CHARGE ON OR AFTER SEPTEMBER 30, 2010, WHETHER BECAUSE THE PERSON'S ARREST OCCURRED BEFORE THAT DATE, BECAUSE THE PERSON'S APPEARANCE IS PROCURED BY SUMMONS RATHER THAN ARREST, OR FOR OTHER REASONS.

(II) IN CASES WHERE A BOOKING PROCESS OCCURS ON OR AFTER SEPTEMBER 30, 2010, THE LAW ENFORCEMENT AGENCY CONDUCTING THE BOOKING PROCESS SHALL COLLECT THE BIOLOGICAL SUBSTANCE SAMPLE FROM THE CHARGED ADULT AS PART OF THE BOOKING PROCESS.

(III) IN ALL OTHER CASES, UPON THE ADULT'S FIRST APPEARANCE IN COURT FOLLOWING THE FILING OF CHARGES, THE COURT SHALL REQUIRE THE ADULT TO SUBMIT TO COLLECTION OF A BIOLOGICAL SUBSTANCE SAMPLE BY THE INVESTIGATING AGENCY RESPONSIBLE FOR FINGERPRINTING PURSUANT TO SECTION 16-21-104, AND THAT AGENCY SHALL COLLECT THE SAMPLE.

(2) (a) AT THE PERSON'S FIRST APPEARANCE IN COURT FOLLOWING THE FILING OF CHARGES, THE COURT SHALL ADVISE THE PERSON THAT THE BIOLOGICAL SUBSTANCE SAMPLE COLLECTED PURSUANT TO THIS SECTION SHALL BE DESTROYED AND THE RESULTS OF THE TESTING OF THE SAMPLE SHALL BE EXPUNGED FROM THE FEDERAL COMBINED DNA INDEX SYSTEM AND ANY STATE INDEX SYSTEM PURSUANT TO THE CIRCUMSTANCES DESCRIBED IN SECTION 16-23-105.

(b) WHEN AN ACTION OCCURS THAT QUALIFIES AN ADULT FOR EXPUNGEMENT PURSUANT TO SECTION 16-23-105 (1), THE COURT OR DISTRICT ATTORNEY SHALL ADVISE THE ADULT THAT THE ADULT MAY MAKE A REQUEST TO THE COLORADO BUREAU OF INVESTIGATION TO HAVE THE BIOLOGICAL SUBSTANCE SAMPLE COLLECTED PURSUANT TO SECTION 16-23-103 DESTROYED AND RESULTS OF THE TESTING OF THE SAMPLE EXPUNGED FROM THE FEDERAL COMBINED DNA INDEX SYSTEM AND ANY STATE INDEX SYSTEM PURSUANT TO THE PROCESS DESCRIBED IN SECTION 16-23-105.

(3) IF COLLECTION OF A BIOLOGICAL SUBSTANCE SAMPLE IS IMPRACTICAL AT THE TIME SPECIFIED IN SUBSECTION (1) OF THIS SECTION, AN APPROPRIATE AGENCY MAY COLLECT A SAMPLE AT ANY OTHER TIME DURING THE ADULT'S DETENTION OR DURING THE PENDENCY OF CHARGES.

(4) AN AGENCY COLLECTING A BIOLOGICAL SUBSTANCE SAMPLE PURSUANT TO THIS SECTION SHALL MAKE REASONABLE EFFORTS TO DETERMINE IF THE COLORADO BUREAU OF INVESTIGATION ALREADY HOLDS A BIOLOGICAL SUBSTANCE SAMPLE FROM THE ADULT. IF, BUT ONLY IF, THE AGENCY DETERMINES THAT THE COLORADO BUREAU OF INVESTIGATION ALREADY HOLDS A SAMPLE FROM THE ADULT, THEN THE AGENCY NEED NOT COLLECT A SAMPLE.

(5) A LAW ENFORCEMENT AGENCY MAY USE REASONABLE FORCE TO COLLECT BIOLOGICAL SUBSTANCE SAMPLES IN ACCORDANCE WITH THIS ARTICLE USING MEDICALLY RECOGNIZED PROCEDURES.

(6) EACH LAW ENFORCEMENT AGENCY THAT COLLECTS A BIOLOGICAL SUBSTANCE SAMPLE SHALL SUBMIT THE SAMPLE TO THE COLORADO BUREAU OF INVESTIGATION FOR TESTING.

**16-23-104. Collection and testing.** (1) THE COLORADO BUREAU OF INVESTIGATION SHALL PROVIDE ALL SPECIMEN VIALS, MAILING TUBES, LABELS, AND OTHER MATERIALS AND INSTRUCTIONS NECESSARY FOR THE COLLECTION OF BIOLOGICAL SUBSTANCE SAMPLES REQUIRED PURSUANT TO THIS ARTICLE.

(2) THE COLORADO BUREAU OF INVESTIGATION SHALL CHEMICALLY TEST THE BIOLOGICAL SUBSTANCE SAMPLES COLLECTED PURSUANT TO THIS ARTICLE. THE COLORADO BUREAU OF INVESTIGATION SHALL FILE AND MAINTAIN THE TESTING RESULTS IN THE STATE INDEX SYSTEM AFTER RECEIVING CONFIRMATION FROM THE ARRESTING OR CHARGING AGENCY THAT THE ADULT WAS CHARGED WITH A FELONY. IF THE COLORADO BUREAU OF INVESTIGATION DOES NOT RECEIVE CONFIRMATION OF A FELONY CHARGE WITHIN A YEAR AFTER RECEIVING THE SAMPLE FOR TESTING, THE COLORADO BUREAU OF INVESTIGATION SHALL DESTROY THE BIOLOGICAL SAMPLE AND ANY RESULTS FROM THE TESTING OF THE SAMPLE. THE COLORADO BUREAU OF INVESTIGATION SHALL FURNISH THE RESULTS TO A LAW ENFORCEMENT AGENCY UPON REQUEST. THE COLORADO BUREAU OF INVESTIGATION SHALL STORE AND PRESERVE ALL BIOLOGICAL SUBSTANCE SAMPLES OBTAINED PURSUANT TO THIS ARTICLE.

**16-23-105. Expungement.** (1) EXCEPT AS PROVIDED IN SUBSECTION (7) OF THIS SECTION, A PERSON WHOSE BIOLOGICAL SUBSTANCE SAMPLE IS COLLECTED PURSUANT TO SECTION 16-23-103 QUALIFIES FOR EXPUNGEMENT IF:

(a) IN THE CASE OF A SAMPLE COLLECTED BASED UPON THE FILING OF A CHARGE OR BASED UPON A FINAL COURT ORDER, EACH FELONY CHARGE STEMMING FROM THE CHARGES HAS, BY FINAL COURT ORDER, BEEN DISMISSED, RESULTED IN AN ACQUITTAL, OR RESULTED IN A CONVICTION FOR AN OFFENSE OTHER THAN A FELONY OFFENSE DESCRIBED IN TITLE 18, C.R.S.;

(b) IN THE CASE OF A SAMPLE COLLECTED BASED UPON AN ARREST:

(I) A FELONY CHARGE WAS NOT FILED WITHIN NINETY DAYS AFTER THE ARREST;  
OR

(II) EACH FELONY CHARGE STEMMING FROM THE ARREST HAS, BY FINAL COURT ORDER, BEEN DISMISSED, RESULTED IN AN ACQUITTAL, OR RESULTED IN A

CONVICTION FOR AN OFFENSE OTHER THAN A FELONY OFFENSE.

(2) A PERSON WHO QUALIFIES FOR EXPUNGEMENT UNDER SUBSECTION (1) OF THIS SECTION MAY SUBMIT A WRITTEN REQUEST FOR EXPUNGEMENT TO THE COLORADO BUREAU OF INVESTIGATION. THE REQUEST SHALL INCLUDE THE ITEMS LISTED IN THIS SUBSECTION (2) AND MAY INCLUDE ANY ADDITIONAL INFORMATION THAT MAY ASSIST THE BUREAU IN LOCATING THE RECORDS OF ARREST OR CHARGES OR THE BIOLOGICAL SUBSTANCE SAMPLE OR TESTING RESULTS. THE FOLLOWING INFORMATION SHALL BE INCLUDED IN THE SUBMITTED REQUEST:

- (a) THE PERSON'S NAME, DATE OF BIRTH, AND MAILING ADDRESS;
- (b) THE NAME OF THE AGENCY THAT COLLECTED THE BIOLOGICAL SUBSTANCE SAMPLE;
- (c) THE DATE OF ARREST OR OTHER DATE WHEN THE SAMPLE WAS TAKEN;
- (d) WHETHER ANY CHARGES WERE FILED STEMMING FROM THE ARREST FOR WHICH A BIOLOGICAL SUBSTANCE SAMPLE WAS COLLECTED, THE IDENTITY OF THE COURT, AND THE CASE NUMBER OF EACH CASE IN WHICH CHARGES WERE FILED; AND
- (e) A DECLARATION THAT, TO THE BEST OF THE PERSON'S KNOWLEDGE, HE OR SHE QUALIFIES FOR EXPUNGEMENT.

(3) UPON RECEIPT OF A REQUEST SATISFYING THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION, THE COLORADO BUREAU OF INVESTIGATION SHALL PROMPTLY SUBMIT A WRITTEN INQUIRY TO THE DISTRICT ATTORNEY IN THE JURISDICTION IN WHICH THE PERSON'S BIOLOGICAL SUBSTANCE SAMPLE WAS COLLECTED CONCERNING THE OUTCOME OF THE ARREST OR CHARGES.

(4) WITHIN NINETY DAYS AFTER RECEIVING THE REQUEST SUBMITTED PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE COLORADO BUREAU OF INVESTIGATION SHALL DESTROY THE BIOLOGICAL SUBSTANCE SAMPLE COLLECTED PURSUANT TO SECTION 16-23-103 AND EXPUNGE THE RESULTS OF THE TESTING OF THE SAMPLE FROM THE FEDERAL COMBINED DNA INDEX SYSTEM AND ANY STATE INDEX SYSTEM, UNLESS THE BUREAU RECEIVES WRITTEN NOTIFICATION FROM THE APPLICABLE DISTRICT ATTORNEY THAT THE PERSON DOES NOT QUALIFY FOR EXPUNGEMENT AND THE REASONS THAT THE PERSON DOES NOT QUALIFY.

(5) WITHIN THIRTY DAYS AFTER RECEIVING A NOTICE FROM A DISTRICT ATTORNEY PURSUANT TO SUBSECTION (4) OF THIS SECTION, OR AT THE END OF THE NINETY-DAY PERIOD IDENTIFIED IN SUBSECTION (4) OF THIS SECTION, WHICHEVER IS EARLIER, THE COLORADO BUREAU OF INVESTIGATION SHALL SEND NOTIFICATION BY FIRST CLASS MAIL TO THE PERSON ARRESTED OR CHARGED, EITHER STATING THAT THE BUREAU HAS DESTROYED THE BIOLOGICAL SUBSTANCE SAMPLE AND EXPUNGED THE RESULTS OF THE TESTING OF THE SAMPLE OR STATING WHY THE BUREAU HAS NOT DESTROYED THE SAMPLE AND EXPUNGED THE TEST RESULTS.

(6) A DATA BANK OR DATABASE MATCH SHALL NOT BE ADMITTED AS EVIDENCE AGAINST A PERSON IN A CRIMINAL PROSECUTION AND SHALL NOT BE USED AS A BASIS TO IDENTIFY A PERSON IF THE MATCH IS:

(a) DERIVED FROM A BIOLOGICAL SUBSTANCE SAMPLE THAT IS REQUIRED TO BE DESTROYED OR EXPUNGED PURSUANT TO THIS SECTION; AND

(b) OBTAINED AFTER THE REQUIRED DATE OF DESTRUCTION OR EXPUNGEMENT.

(7) THIS SECTION SHALL NOT APPLY IF THE PERSON HAS BEEN ARRESTED FOR, CHARGED WITH, OR CONVICTED OF SOME OTHER OFFENSE ON THE BASIS OF WHICH A BIOLOGICAL SUBSTANCE SAMPLE WAS OR COULD HAVE BEEN COLLECTED UNDER STATE STATUTE.

(8) FOR PURPOSES OF THIS SECTION, A COURT ORDER SHALL NOT BE DEEMED FINAL IF TIME REMAINS FOR AN APPEAL OR APPLICATION FOR DISCRETIONARY REVIEW WITH RESPECT TO THE ORDER.

**SECTION 2.** 24-72-302 (4), Colorado Revised Statutes, is amended to read:

**24-72-302. Definitions.** As used in this part 3, unless the context otherwise requires:

(4) "Criminal justice records" means all books, papers, cards, photographs, tapes, recordings, or other documentary materials, regardless of form or characteristics, that are made, maintained, or kept by any criminal justice agency in the state for use in the exercise of functions required or authorized by law or administrative rule, including but not limited to the results of chemical biological substance testing to determine genetic markers conducted pursuant to sections 16-11-102.4, 16-11-104, 16-11-204.3, ~~and~~ 16-11-308 (4.5), AND 16-23-104, C.R.S.

**SECTION 3.** 24-72-305 (1.5), Colorado Revised Statutes, is amended to read:

**24-72-305. Allowance or denial of inspection - grounds - procedure - appeal.**

(1.5) On the ground that disclosure would be contrary to the public interest, the custodian of criminal justice records shall deny access to the results of chemical biological substance testing to determine the genetic markers conducted pursuant to sections 16-11-102.4, 16-11-104, 16-11-204.3, ~~and~~ 16-11-308 (4.5), AND 16-23-104, C.R.S.

**SECTION 4.** 24-33.5-104.5 (3), Colorado Revised Statutes, is amended to read:

**24-33.5-104.5. Powers of executive director - DNA evidence issues - working group.** (3) (a) After completing the report required in subsection (2) of this section, the working group shall convene to make recommendations to the general assembly for legislation addressing the issues of DNA evidence retention and storage. The recommendations shall include, but need not be limited to, standardized time lines for retention of reasonable and relevant DNA evidence, provision of storage facilities, and best practices for evidence collection and storage. The working group shall make its recommendations by December 1, 2010.

(b) THE WORKING GROUP SHALL CONVENE TO DISCUSS AND MAKE RECOMMENDATIONS REGARDING THE APPROPRIATENESS AND IMPLEMENTATION OF SENATE BILL 09-241. PRIOR TO JANUARY 12, 2010, THE WORKING GROUP SHALL PROVIDE A REPORT TO THE GENERAL ASSEMBLY REGARDING ITS DISCUSSION AND

RECOMMENDATIONS REGARDING THE APPROPRIATENESS AND IMPLEMENTATION OF SENATE BILL 09-241. THE REPORT MAY INCLUDE BOTH A MAJORITY AND MINORITY REPORT.

**SECTION 5.** 24-33.5-415.6, Colorado Revised Statutes, is amended to read:

**24-33.5-415.6. Offender identification - fund.** (1) There is hereby created in the state treasury the offender identification fund, referred to in this section as the "fund". Moneys in the fund shall consist of COSTS AND SURCHARGES LEVIED PURSUANT TO THIS SECTION AND payments for genetic testing received from offenders pursuant to sections 16-11-102.4, 18-1.3-407, and 19-2-925.6, C.R.S. Subject to annual appropriations by the general assembly, the executive director and the state court administrator are authorized to expend moneys in the fund to pay for genetic testing of offenders pursuant to sections 16-11-102.4 and 18-1.3-407, C.R.S. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.

(2) (Deleted by amendment, L. 2006, p. 1692, § 14, effective July 1, 2007.)

(3) (a) A COST OF TWO DOLLARS AND FIFTY CENTS IS HEREBY LEVIED ON EACH CRIMINAL ACTION RESULTING IN A CONVICTION OR IN A DEFERRED JUDGMENT AND SENTENCE, AS PROVIDED IN SECTION 18-1.3-102, C.R.S., FOR A FELONY, A MISDEMEANOR, OR MISDEMEANOR TRAFFIC OFFENSE, CHARGED PURSUANT TO STATE STATUTE. THE DEFENDANT SHALL PAY THE COSTS TO THE CLERK OF THE COURT. EACH CLERK SHALL TRANSMIT THE MONEYS TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE FUND.

(b) THE PROVISIONS OF SECTIONS 18-1.3-701 AND 18-1.3-702, C.R.S., SHALL APPLY AS TO THE COLLECTION OF COSTS LEVIED PURSUANT TO THIS SUBSECTION (3).

(4) A SURCHARGE OF TWO DOLLARS AND FIFTY CENTS IS HEREBY LEVIED AGAINST EACH PENALTY ASSESSMENT NOTICE ISSUED PURSUANT TO SECTION 42-4-1701, C.R.S., FOR A MISDEMEANOR OR A CLASS 1 OR CLASS 2 MISDEMEANOR TRAFFIC OFFENSE UNDER STATE STATUTE THAT RESULTS IN PAYMENT OF THE PENALTY ASSESSMENT WITHOUT THE COMMENCEMENT OF A CRIMINAL ACTION. ALL MONEYS COLLECTED BY THE DEPARTMENT OF REVENUE PURSUANT TO THIS SUBSECTION (4) SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE FUND.

(5) A COST OF TWO DOLLARS AND FIFTY CENTS IS HEREBY LEVIED AGAINST EACH CIVIL ACTION RESULTING IN AN ADMISSION OF LIABILITY OR A JUDGMENT AGAINST THE DEFENDANT FOR A CLASS A OR CLASS B TRAFFIC INFRACTION CHARGED PURSUANT TO STATE STATUTE. THE DEFENDANT SHALL PAY THE COST TO THE CLERK OF THE COURT. EACH CLERK SHALL TRANSMIT THE MONEYS TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE FUND.

(6) A SURCHARGE OF TWO DOLLARS AND FIFTY CENTS IS HEREBY LEVIED AGAINST EACH PENALTY ASSESSMENT NOTICE ISSUED PURSUANT TO SECTION 42-4-1701, C.R.S., FOR A CLASS A OR CLASS B TRAFFIC INFRACTION UNDER STATE STATUTE THAT RESULTS IN PAYMENT OF THE PENALTY ASSESSMENT WITHOUT THE

COMMENCEMENT OF A CIVIL ACTION. ALL MONEYS COLLECTED BY THE DEPARTMENT OF REVENUE PURSUANT TO THIS SUBSECTION (6) SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE FUND.

(7) A SURCHARGE OF TWO DOLLARS AND FIFTY CENTS IS HEREBY LEVIED AGAINST EACH PENALTY ASSESSMENT ISSUED PURSUANT TO SECTION 33-6-104, C.R.S., THAT RESULTS IN PAYMENT OF THE PENALTY ASSESSMENT WITHOUT THE COMMENCEMENT OF A CRIMINAL ACTION. ALL MONEYS COLLECTED BY THE DIVISION OF WILDLIFE IN THE DEPARTMENT OF NATURAL RESOURCES PURSUANT TO THIS SUBSECTION (7) SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE FUND.

(8) A SURCHARGE OF TWO DOLLARS AND FIFTY CENTS IS HEREBY LEVIED AGAINST EACH PENALTY ASSESSMENT ISSUED PURSUANT TO SECTION 33-15-102, C.R.S., THAT RESULTS IN PAYMENT OF THE PENALTY ASSESSMENT WITHOUT THE COMMENCEMENT OF A CRIMINAL ACTION. ALL MONEYS COLLECTED BY THE DIVISION OF PARKS AND OUTDOOR RECREATION IN THE DEPARTMENT OF NATURAL RESOURCES PURSUANT TO THIS SUBSECTION (8) SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE FUND.

(9) THE COURT MAY WAIVE A COST OR SURCHARGE LEVIED PURSUANT TO THIS SECTION IF THE COURT DETERMINES THE DEFENDANT IS INDIGENT.

**SECTION 6.** 42-4-1701, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**42-4-1701. Traffic offenses and infractions classified - penalties - penalty and surcharge schedule.** (8) THE SURCHARGES DESCRIBED IN SUBSECTIONS (4) TO (6) OF THIS SECTION ARE SEPARATE AND DISTINCT FROM A SURCHARGE LEVIED PURSUANT TO SECTION 24-33.5-415.6, C.R.S.

**SECTION 7.** 42-4-1707 (3) (a) and (6), Colorado Revised Statutes, are amended to read:

**42-4-1707. Summons and complaint or penalty assessment notice for misdemeanors, petty offenses, and misdemeanor traffic offenses - release - registration.** (3) (a) Whenever a penalty assessment notice for a misdemeanor, petty offense, or misdemeanor traffic offense is issued pursuant to section 42-4-1701 (5) (a), the penalty assessment notice ~~which~~ THAT shall be served upon the defendant by the peace officer shall contain the name and address of the defendant, the license number of the vehicle involved, if any, the number of the defendant's driver's license, if any, a citation of the statute alleged to have been violated, a brief description of the offense, the date and approximate location thereof, the amount of the penalty prescribed for the offense, the amount of the ~~surcharge~~ SURCHARGES thereon pursuant to sections 24-4.1-119 (1) (f), ~~and~~ 24-4.2-104 (1), AND 24-33.5-415.6, C.R.S., the number of points, if any, prescribed for the offense pursuant to section 42-2-127, and the date the penalty assessment notice is served on the defendant; shall direct the defendant to appear in a specified county court at a specified time and place in the event the penalty and ~~surcharge~~ SURCHARGES thereon are not paid; shall be signed by the peace officer; and shall

contain a place for the defendant to elect to execute a signed acknowledgment of guilt and an agreement to pay the penalty prescribed and ~~surcharge~~ SURCHARGES thereon within twenty days, as well as such other information as may be required by law to constitute the penalty assessment notice to be a summons and complaint, should the prescribed penalty and ~~surcharge~~ SURCHARGES thereon not be paid within the time allowed in section 42-4-1701.

(6) If the defendant is otherwise eligible to be issued a summons and complaint or a penalty assessment notice for a violation of this title punishable as a misdemeanor, petty offense, or misdemeanor traffic offense and if the defendant does not possess a valid Colorado driver's license, the defendant, in order to secure release, as provided in this section, must either consent to be taken by the officer to the nearest mailbox and to mail the amount of the penalty and ~~surcharge~~ SURCHARGES thereon to the department or must execute a promise to appear in court on the penalty assessment notice or on the summons and complaint. If the defendant does possess a valid Colorado driver's license, the defendant shall not be required to execute a promise to appear on the penalty assessment notice or on the summons and complaint. The peace officer shall not require any person who is eligible to be issued a summons and complaint or a penalty assessment notice for a violation of this title to produce or divulge such person's social security number.

**SECTION 8.** 42-4-1709 (1), Colorado Revised Statutes, is amended to read:

**42-4-1709. Penalty assessment notice for traffic infractions - violations of provisions by officer - driver's license.** (1) Whenever a penalty assessment notice for a traffic infraction is issued pursuant to section 42-4-1701 (5) (a), the penalty assessment notice ~~which~~ THAT shall be served upon the defendant by the peace officer shall contain the name and address of the defendant, the license number of the vehicle involved, if any, the number of the defendant's driver's license, if any, a citation of the statute alleged to have been violated, a brief description of the traffic infraction, the date and approximate location thereof, the amount of the penalty prescribed for the traffic infraction, the amount of the ~~surcharge~~ SURCHARGES thereon pursuant to sections 24-4.1-119 (1) (f), ~~and~~ 24-4.2-104 (1), AND 24-33.5-415.6, C.R.S., the number of points, if any, prescribed for the traffic infraction pursuant to section 42-2-127, and the date the penalty assessment notice is served on the defendant; shall direct the defendant to appear in a specified county court at a specified time and place in the event the penalty and ~~surcharge~~ SURCHARGES thereon ~~is~~ ARE not paid; shall be signed by the peace officer; and shall contain a place for the defendant to elect to execute a signed acknowledgment of liability and an agreement to pay the penalty prescribed and ~~surcharge~~ SURCHARGES thereon within twenty days, as well as such other information as may be required by law to constitute the penalty assessment notice to be a summons and complaint, should the prescribed penalty and ~~surcharge~~ SURCHARGES thereon not be paid within the time allowed in section 42-4-1701.

**SECTION 9.** 33-6-104, Colorado Revised Statutes, is amended to read:

**33-6-104. Imposition of penalty - procedures.** (1) Any person who violates any of the provisions of articles 1 to 6 of this title or any rule ~~or regulation~~ of the commission that does not have a specific penalty listed is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars, A



SURCHARGE AS DESCRIBED IN SECTION 24-33.5-415.6, C.R.S., and an assessment of five license suspension points.

(2) At the time that any person is charged with violating any misdemeanor provisions of articles 1 to 6 of this title or any rule ~~or regulation~~ of the commission, the officer shall issue a summons and complaint to the alleged offender or, in the case of a violation for which a fine of a fixed amount is prescribed, may give the alleged offender an opportunity to voluntarily pay the fine AND SURCHARGE in the form of a penalty assessment. Penalty assessments shall not be issued for violations for which minimum and maximum fines have been established. The penalty assessment notice given to the alleged offender shall contain the information required in and be in the form of a summons and complaint and shall specify in dollars the amount of the penalty to be assessed for the alleged offense and the amount of the ~~surcharge~~ SURCHARGES to be collected pursuant to ~~section~~ SECTIONS 24-4.2-104 (1) AND 24-33.5-415.6, C.R.S. If the alleged offender accepts such notice and pays the fine and the ~~surcharge~~ SURCHARGES entered thereon to the division within fifteen days of issuance of the notice, such acceptance and payment shall constitute an acknowledgment of guilt by such person of the violation set forth in the penalty assessment notice. Any person who accepts a penalty assessment notice but who does not furnish satisfactory evidence of identity or who the officer has reasonable and probable grounds to believe will disregard a written promise to pay the specified fine and ~~surcharge~~ SURCHARGES may be taken by the officer to the nearest known post-office facility and BE required to remit the amount of the specified fine and ~~surcharge~~ SURCHARGES to the division immediately by mail in United States currency or other legal tender by money order or personal check. Refusal or inability to remit the specified fine and ~~surcharge~~ SURCHARGES by mail when required shall constitute a refusal to accept a penalty assessment notice. The officer shall advise the person arrested of the license suspension points to be assessed in accordance with section 33-6-106. Checks tendered by the violator to and accepted by the division and on which payment is received by the division shall be deemed sufficient receipt. If the fine and ~~surcharge~~ SURCHARGES are not so paid, then the officer who issued the penalty assessment notice shall docket the summons and complaint with a court of competent jurisdiction for appearance by the person to answer the charges therein contained at such time and place as is specified in the summons and complaint.

**SECTION 10.** 33-15-102 (2), Colorado Revised Statutes, is amended to read:

**33-15-102. Imposition of penalty - procedures.** (2) At the time that any person is charged with violating any petty offense or misdemeanor provisions of articles 10 to 15 or 32 of this title or any rule of the board, the officer shall issue a summons and complaint to the alleged offender or, in the case of a violation for which a fine of a fixed amount is prescribed, may give the alleged offender an opportunity to voluntarily pay the fine AND SURCHARGE in the form of a penalty assessment. Penalty assessments shall not be issued for violations for which minimum and maximum fines have been established. The penalty assessment notice given to the alleged offender shall contain the information required in and be in the form of a summons and complaint and shall specify in dollars the amount of the penalty to be assessed for the alleged offense AND THE AMOUNT OF THE SURCHARGE TO BE COLLECTED PURSUANT TO SECTION 24-33.5-415.6, C.R.S. If the alleged offender accepts such notice and pays the fine AND SURCHARGE entered thereon to the

division within twenty days of issuance of the notice, such acceptance and payment shall constitute an acknowledgment of guilt by such person of the violation set forth in the penalty assessment notice. Any person who accepts a penalty assessment notice but who does not furnish satisfactory evidence of identity or who the officer has reasonable and probable grounds to believe will disregard a written promise to pay the specified fine AND SURCHARGE may be taken by the officer to the nearest known post-office facility and BE required to remit the amount of the specified fine AND SURCHARGE to the division immediately by mail in United States currency or other legal tender or by money order or personal check. Refusal or inability to remit the specified fine AND SURCHARGE by mail when required shall constitute a refusal to accept a penalty assessment notice. Checks tendered by the violator to and accepted by the division and on which payment is received by the division shall be deemed sufficient receipt. If the fine ~~is~~ AND SURCHARGE ARE not so paid, then the officer who issued the penalty assessment notice shall docket the summons and complaint with a court of competent jurisdiction for appearance by the person to answer the charges therein contained at such time and place as is specified in the summons and complaint.

**SECTION 11.** 18-1-412, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**18-1-412. Procedure for application for DNA testing - appointment of counsel.** (9) UPON MOTION OF THE DEFENDANT OR HIS OR HER COUNSEL, THE COURT SHALL ORDER A DATABASE SEARCH BY A LAW ENFORCEMENT AGENCY IF THE COURT DETERMINES THAT A REASONABLE PROBABILITY EXISTS THAT THE DATABASE SEARCH WILL PRODUCE EXCULPATORY OR MITIGATING EVIDENCE RELEVANT TO A CLAIM OF WRONGFUL CONVICTION OR SENTENCING. DNA PROFILES MUST MEET CURRENT NATIONAL DNA DATABASE INDEX SYSTEM ELIGIBILITY STANDARDS AND CONFORM TO CURRENT FEDERAL BUREAU OF INVESTIGATION QUALITY ASSURANCE STANDARDS IN ORDER TO BE ELIGIBLE FOR SEARCH AGAINST THE STATE INDEX SYSTEM.

**SECTION 12. Appropriation.** In addition to any other appropriation, there is hereby appropriated, out of any moneys in the offender identification fund created in section 24-33.5-415.6, Colorado Revised Statutes, not otherwise appropriated, to the department of public safety, for allocation to the Colorado bureau of investigation, for the fiscal year beginning July 1, 2009, the sum of seventy-five thousand dollars (\$75,000), or so much thereof as may be necessary, for the preparation for implementation and implementation of this act.

**SECTION 13. Effective date.** (1) Sections 4 through 14 of this act shall take effect July 1, 2009.

(2) Sections 1 through 3 of this act shall take effect September 30, 2010.

**SECTION 14. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 21, 2009