

Updated to include amendments adopted on February 3, 2010, and to change an allocation of costs between Corrections and Patrol.

**FISCAL NOTE**  
**LEGISLATIVE FISCAL ANALYST ESTIMATE**

<b>ESTIMATE OF FISCAL IMPACT – STATE AGENCIES *</b>				
	<b>FY 2010-11</b>		<b>FY 2011-12</b>	
	<b>EXPENDITURES</b>	<b>REVENUE</b>	<b>EXPENDITURES</b>	<b>REVENUE</b>
GENERAL FUNDS				
CASH FUNDS	See Below	See Below	See Below	See Below
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS				

\*Does not include any impact on political subdivisions. See narrative for political subdivision estimates.

This amended bill would provide for collection of DNA samples from individuals convicted of a felony. It also requires newly admitted inmates and probationers to pay for the DNA sample kit. Existing inmates and probationers will not be required to pay for this kit.

The Legislative Fiscal Office analyst (LFO) used information from the State Patrol, Department of Correctional Services, and Probation Administration to assemble the following table showing the fiscal impacts of this amended bill:

	FY2010-2011	FY2011-2012
Existing DCS inmates needing a DNA sample	2,316	
Existing probationers needing testing	1,812	
Total existing inmates and probationers	4,128	
DNA sample kit cost	\$ 25	\$ 25
Cost of existing inmates and probationers	\$ 103,200	
DCS Expenditure Estimate:	FY2010-2011	FY2011-2012
Contract medical: Range of \$36,400 to \$72,800 one-time cost	\$ 72,800	\$ -
Total from the State DNA Sample and Data Base Fund	\$ 176,000	\$ -
Allocation between DCS and State Patrol:		
Department of Correctional Services	\$ 72,800	
State Patrol	\$ 103,200	
Total from the State DNA Sample and Data Base Fund	\$ 176,000	
New Admissions: inmates and probationers	FY2010-2011	FY2011-2012
Average annual intake to DCS	2,000	2,000
Estimated number of felons sentenced to probation	1,380	1,380
Total DCS inmates and probationers needing testing	3,380	3,380
DNA sample kit cost	\$ 25	\$ 25
Total Cost	\$ 84,500	\$ 84,500
Allocation among cash funds:		
Department of Correctional Services Facility Cash Fund	\$ 50,000	\$ 50,000
Nebraska State Patrol Cash Fund	\$ 34,500	\$ 34,500
Total	\$ 84,500	\$ 84,500

Table Notes:

- In FY2010-11 there are 3,192 probationers needing DNA testing and in FY2011-12 and beyond there are estimated to be 1,380 that will need testing. Therefore, it appears that 1,812 (3,192-1,380) are existing probationers needing testing.
- Average annual intake to DCS - all inmates requiring a DNA test, not just inmates impacted by this bill.

The Department of Correctional Services response is included below:

LB 190 as amended provides that DNA samples be collected from any person who is convicted of a felony offense after the effective date of this act, who does not have a DNA sample available for use in the State DNA sample base. The bill also provides that a DNA sample be collected from any individual serving a term of confinement for a felony offense before his or her release. The bill also includes provisions providing that persons convicted of a felony after the effective date of this act which requires a DNA sample be taken.

1. New Admissions

There were 1971 admissions in calendar year 2008, with 429 requiring DNA testing. There have been 1830 felony admissions so far in CY2009, (through December 8) with 433 requiring DNA testing. Projecting for the remainder of the calendar year, DCS estimates there will be 2000 felony admission in CY2010, with 450 requiring testing under existing statutes. Under this bill, the remaining approximately 1550 individuals coming into the DCS system each year would also require DNA testing. (DCS is currently testing DNA upon admission for a number of offenses, including certain sex offenses, robbery, certain burglary, murder, manslaughter, and kidnapping.)

Currently the testing on male inmates at the Diagnostic & Evaluation Center is done at the same time the original blood draw is done for medical testing. DCS has found over the past year of testing that over 90% of the 400+ inmates currently being tested request the buccal (i.e. inside the mouth/cheek) swab.

Taking the DNA sample involves a special kit and control instructions, a release and choice of methods form, fingerprinting at the time the sample is taken, and signatures of the inmate, the person taking the sample, and a witness. This process takes 15-20 minutes over and above the medical blood draw time. DCS would establish procedures to obtain the DNA samples from felony inmates at admission utilizing current staff.

New admissions would need to pay for the test. DCS would test new admissions and charge for the cost of the testing kits only (currently \$25, as indicated by the State Patrol). Yearly cost of the kits is estimated at 2000 inmates times \$25, or \$50,000 per year. DCS would purchase the kits in advance from the State Patrol. The cost of the kits would be recouped by a one-time transfer of funds from the affected inmate's account to the DCS cash fund when the inmate had sufficient monies in his or her account to pay for the testing kit.

Note: DCS consistently has approximately 10% of its inmates (new and existing) that are indigent, and are not able to earn money while incarcerated. The fiscal note assumes that DCS absorb the cost of the kits (\$5,000/yr) for these inmates.

2. Existing Inmates

There are 2316 inmates in DCS as of December 7, 2009 that have not been DNA tested. These inmates would have to be tested prior to their release. DCS estimates that by contracting for the equivalent of between a .5 FTE and a 1.0FTE LPN 2 (Grade 229A) with a medical nursing services provider to visit the eight remaining DCS facilities in the state over the course of the next year, we can provide the DNA testing at the various sites as needed, and be caught up with the existing inmates by the end of one full year. (There may be different contracts for different sites or geographical areas, but it would be the equivalent of between a .5 and 1.0 contract FTE)

Current contract costs for LPNs are approximately \$35/hr, thus, .5 equivalent LPN for the year, on a contract basis would cost \$35 /hr times 1,040 standard hours per year, or \$36,500, a 1.0 FTE equivalent would be \$35/hr times 2080 standard hours, or \$72,800

The fiscal note assumes that funding for the temporary .5 to 1.0 equivalent LPN would be through the State DNA Sample & Data Base Fund.

The Supreme Court – Office of Probation Administration's response is included below:

AM1715 to LB 190 relates to the Supreme Court in those sections that require certain convicted probationers to pay for the collection of a DNA sample. Specifically Section 29-4106 (1)(b) (Sec. 4 of ER8149 which AM1715 amends) pertains to probationers since it refers to persons with a sentence that does not involve incarceration. It states that DNA samples from such persons will be collected at a detention facility or institution as specified by the court. The Office of Probation Administration assumes that the cost of collection kits will be paid by these detention facilities and institutions and probationers, in turn, will reimburse the facility or institution. Therefore there would be no fiscal impact to the Supreme Court from this process.

Probation officers are currently responsible for determining if all conditions of probation have been met. As a result of the amendment, an officer will have the additional requirement of determining whether all costs related to DNA collection have been paid presumably by checking with the appropriate facility or institution where the sample was collected. This additional responsibility will not create a fiscal impact.

**IMPACT ON POLITICAL SUBDIVISIONS:** Currently, the State Patrol pays for DNA sample kits for probationers. The amended bill requires newly admitted probationers to pay for the kits. Any probationer for whom the court waives the costs of the DNA sample kit (indigent) would mean that the State Patrol would be responsible for the costs of those DNA sample kits.

Additionally, if under this amended bill the State Patrol no longer pays for the DNA sample kits, then the county sheriff will have to purchase the kits and recover the cost from the probationers. Any probationer for whom the court waives the costs of the DNA sample kit (indigent) would mean that the county sheriff would be responsible for the costs of those DNA sample kits.