

1 AN ACT relating to deoxyribonucleic acid.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 17.169 is amended to read as follows:

4 As used in this section and KRS 17.170 and 17.175, the following definitions shall apply:

5 (1) "DNA sample" or "deoxyribonucleic acid sample" means a ***biological sample***~~[blood~~
6 ~~or swab specimen]~~ from a person, as prescribed by administrative regulation, that is
7 required to provide a DNA sample pursuant to KRS 17.170 or 17.510, that shall be
8 submitted to the Department of Kentucky State Police forensic laboratory for law
9 enforcement identification purposes and inclusion in law enforcement identification
10 databases;~~[and]~~

11 (2) "Authorized personnel" means an agent of state ***or local*** government who is
12 properly trained in DNA sample collection pursuant to administrative regulation;
13 ***and***

14 **(3) "Rapid DNA instruments" means instrumentation that carries out a fully**
15 **automated process to derive a DNA analysis from a DNA sample.**

16 ➔Section 2. KRS 17.170 is amended to read as follows:

17 (1) Any DNA sample collected pursuant to the law in effect prior to March 27, 2009,
18 shall be maintained and used pursuant to this section and KRS 17.175 and 17.510.

19 (2) The following persons shall have a DNA sample collected by authorized personnel:

20 (a) Any person convicted on or after March 27, 2009, of a felony offense under
21 the Kentucky Revised Statutes;~~[or]~~

22 (b) Any juvenile who was at least fourteen (14) years of age at the time of the
23 commission of the offense and who stands adjudicated delinquent of being a
24 public offender by a court of competent jurisdiction, of:

25 1. Any felony offense in KRS Chapter 510;

26 2. Incest as defined in KRS 530.020;

27 3. Criminal attempt or criminal conspiracy to commit an offense identified

1 in subparagraph 1. or 2. of this paragraph; or

2 4. Being a juvenile sexual offender under KRS 635.510; or

3 (c) Any adult arrested or indicted for, or otherwise charged with, any offense
4 classified as a felony offense in the Kentucky Revised Statutes after the
5 effective date of this Act.

6 (3) (a) It shall be the duty of an arresting peace officer who takes any person
7 arrested for a felony offense directly before a judge without booking the
8 person into a jail to have a DNA sample collected by authorized personnel
9 and to submit that sample to the Department of Kentucky State Police
10 forensic laboratory.

11 (b) It shall be the duty of the jailer or other local correctional official into
12 whose custody a person arrested for a felony offense is committed to have a
13 DNA sample collected by authorized personnel as part of the person's
14 booking process and to submit that sample to the Department of Kentucky
15 State Police forensic laboratory.

16 (c) If a person making his or her initial court appearance before a judge
17 pursuant to an arrest, indictment, summons, or other process for the charge
18 of a felony offense has not previously had a sample of his or her DNA
19 collected pursuant to this subsection, it shall be the duty of the sheriff to
20 have a DNA sample collected by authorized personnel as part of that
21 person's initial appearance. The sheriff shall submit the DNA samples
22 collected to the Department of Kentucky State Police forensic laboratory.
23 The judge before whom the person is appearing shall issue any orders
24 necessary to effectuate the requirements of this paragraph.

25 (d) It shall not be necessary to collect a DNA sample from a person under this
26 section if the person charged with collecting the sample verifies through a
27 mechanism approved by the Department of Kentucky State Police forensic

1 laboratory both the identity of the charged person and that the person has
2 previously submitted a DNA sample that remains on file.

3 (e) A DNA sample may be collected by authorized personnel at any point
4 during the pendency of a charge for a felony offense made after the
5 effective date of this Act if a DNA sample was not previously collected
6 pursuant to this section, or if a previously collected DNA sample was lost,
7 damaged, destroyed, contaminated, or was otherwise unusable.

8 (f) 1. Authorized personnel may collect a second DNA sample to be
9 processed utilizing rapid DNA instruments from a person arrested or
10 indicted for, or otherwise charged with, a felony offense.

11 2. The second sample shall be destroyed after processing, and resulting
12 profiles shall be stored and searched only in the state DNA database.

13 3. The cabinet shall promulgate regulations in accordance with KRS
14 Chapter 13A to establish standards for the operation of rapid DNA
15 instruments by local governments.

16 (4) Any person who is required to register as a sex offender under KRS 17.510 who is
17 not otherwise required to submit to a DNA sample collection under this section or
18 KRS 17.510, including those persons convicted of a felony or adjudicated as a
19 public offender on offenses in other jurisdictions as identified in KRS 17.510(6)
20 and (7), shall have a DNA sample collected by authorized personnel.

21 ~~(5)~~~~(4)~~ Any person who is required to provide a DNA sample pursuant to subsection
22 (2) of this section and who is released from custody upon sentencing or
23 adjudication shall immediately report to the local probation and parole office and
24 shall have a DNA sample collected by authorized personnel.

25 ~~(6)~~~~(5)~~ A DNA sample shall be obtained in an approved manner by authorized
26 personnel~~[, a physician, registered nurse, phlebotomist, medical technician, or~~
27 ~~medical technologist,]~~ and packaged with supplies and containers provided by the

1 Department of Kentucky State Police forensic laboratory in accordance with
2 administrative regulations promulgated by the cabinet. No civil liability shall attach
3 to any person authorized to obtain the DNA sample as provided by this section as a
4 result of the act of obtaining the DNA sample from any person, provided the
5 procedure was done according to administrative regulations by the cabinet.

6 ~~(7)~~ Authorized personnel collecting DNA samples under this section or KRS
7 17.510 are not engaging in the practice of medicine pursuant to KRS 311.550.

8 ~~(8)~~ Any person required to provide a DNA sample under this section or KRS
9 17.510 who, after receiving notice of the requirement to provide a DNA sample,
10 knowingly refuses to provide such DNA sample, shall be guilty of a Class A
11 misdemeanor for each separate violation of the offense.

12 ~~(9)~~ Any person who tampers or attempts to tamper with any DNA sample
13 collected under this section or its container without lawful authority shall be guilty
14 of a Class D felony.

15 **(10) A DNA sample obtained in good faith shall be deemed to have been obtained in**
16 **accordance with the requirements of this section, and the legitimate use of the**
17 **information derived from the DNA sample in furtherance of a criminal**
18 **investigation is authorized until the person from whom the DNA sample was**
19 **obtained is granted an expungement as provided by Section 3 of this Act.**

20 ➔Section 3. KRS 17.175 is amended to read as follows:

21 (1) A centralized database of DNA (deoxyribonucleic acid) identification records for
22 convicted or adjudicated offenders, **adults arrested for, indicted for, or charged**
23 **with a felony offense,** crime scene specimens, unidentified human remains, missing
24 persons, and close biological relatives of missing persons shall be established in the
25 Department of Kentucky State Police under the direction, control, and supervision
26 of the Department of Kentucky State Police forensic laboratory. The established
27 system shall be compatible with the procedures set forth in a national DNA

1 identification index to ensure data exchange on a national level.

2 (2) The purpose of the centralized DNA database is to assist federal, state, and local
3 criminal justice and law enforcement agencies within and outside the
4 Commonwealth in the identification, detection, or exclusion of individuals who are
5 subjects of the investigation or prosecution of sex-related crimes, violent crimes, or
6 other crimes, and the identification and location of missing and unidentified
7 persons. **Analysis of DNA samples obtained pursuant to this chapter is not**
8 **authorized for identification of any medical or genetic disorder.**

9 (3) (a) The Department of Kentucky State Police forensic laboratory shall receive,
10 analyze, and classify DNA samples received from the Department of
11 Corrections, the Department of Juvenile Justice, and other sources, and shall
12 file the DNA results in the centralized databases for law enforcement
13 identification and statistical purposes. The department shall analyze and
14 classify all sexual assault evidence collection kits it receives. In cases where a
15 suspect has been identified, the department may give priority to analysis and
16 classification of sexual assault evidence collection kits where the reference
17 standard for comparison is provided with the kit. Except as provided in
18 paragraph (e) of this subsection, by July 1, 2018, the average completion rate
19 for this analysis and classification shall not exceed ninety (90) days, and by
20 July 1, 2020, the average completion rate for this analysis and classification
21 shall not exceed sixty (60) days.

22 (b) Failure to meet the completion time goals established in paragraph (a) of this
23 subsection shall not be a basis for a dismissal of a criminal action or a bar to
24 the admissibility of evidence.

25 (c) The Department of Kentucky State Police shall, by August 1 of each year,
26 report to the Legislative Research Commission the yearly average completion
27 rate for the immediately preceding five (5) fiscal years.

1 (d) With approval by the secretary of the Justice and Public Safety Cabinet in
2 situations in which an equipment casualty necessitates the expedited
3 acquisition or repair of laboratory equipment required for the analysis of
4 evidence, the acquisition or repair shall be exempt from the Finance and
5 Administration Cabinet's competitive bidding process for both acquisition and
6 repair purposes. Each time the authority granted by this paragraph is used, the
7 equipment acquisition or repair shall be fully documented within thirty (30)
8 days by the agency head in a written or electronic letter to the secretary of the
9 Finance and Administration Cabinet, attached to an ordering or payment
10 document in the state's procurement system, which shall include:

- 11 1. An explanation of the equipment acquired or repaired;
- 12 2. The name of the vendor selected;
- 13 3. The amount of procurement;
- 14 4. Other price quotations obtained; and
- 15 5. The basis for selection of the vendor.

16 (e) To the extent appropriated funds are insufficient to meet the average
17 completion time goals established in paragraph (a) of this subsection, the
18 Department of Kentucky State Police forensic laboratory shall no longer be
19 required to meet the average completion time goals.

20 (4) DNA identification records produced from the samples are not public records but
21 shall be confidential and used only for law enforcement purposes. DNA
22 identification records shall be exempt from the provisions of KRS 61.870 to 61.884.

23 (5) DNA identification records produced from evidence collected as a result of an
24 examination performed under KRS 216B.400 that are voluntarily submitted solely
25 for elimination purposes shall not be checked against or included in the centralized
26 database created pursuant to this section or any other database.

27 (6) A person whose DNA profile has been included in the data bank pursuant to this

1 chapter may apply to the Department of Kentucky State Police for removal and
 2 destruction of the DNA record and DNA sample if the arrest or conviction that
 3 led to the taking of the DNA sample or inclusion of the DNA record resulted in
 4 an acquittal, a dismissal, a nolle prosequi, a conviction for a nonfelony offense,
 5 ~~request expungement on the grounds that the conviction or adjudication on which~~
 6 ~~the authority for including the DNA profile was based has been reversed and the~~
 7 ~~case dismissed], or if ~~that~~ the person successfully completed the pretrial diversion~~
 8 ~~program under KRS 533.258 and the charges were dismissed-diverted. The~~
 9 ~~Department of Kentucky State Police shall expunge all identifiable information in~~
 10 ~~the data bank pertaining to the person and destroy all samples from the person upon~~
 11 receiving a valid expungement request accompanied by such verifying
 12 documentation as the department shall require by administrative
 13 regulation ~~receipt of:~~

14 (a) ~~A written request for expungement pursuant to this section; and~~

15 (b) ~~Either:~~

16 1. ~~A certified copy of the court order reversing and dismissing the~~
 17 ~~conviction or adjudication; or~~

18 2. ~~A certified copy of the court order deeming the charges dismissed-~~
 19 ~~diverted].~~

20 (7) The cabinet shall promulgate administrative regulations in accordance with KRS
 21 Chapter 13A necessary to carry out the provisions of the DNA database
 22 identification system to include procedures for collection of DNA samples and the
 23 database system usage and integrity.

24 (8) The Department of Kentucky State Police shall destroy all DNA samples that are
 25 not entered into the DNA database identification system.

26 (9) Any person who disseminates, receives, or otherwise uses or attempts to use
 27 information in the DNA database identification system, knowing that such

1 dissemination, receipt, or use is for a purpose other than authorized by this section,
2 shall be guilty of a Class D felony.

3 ➔Section 4. KRS 64.060 is amended to read as follows:

4 (1) Sheriffs, jailers, constables granted peace officer powers, coroners, marshals, and
5 police officers~~[policemen]~~ shall be paid out of the State Treasury for the following
6 services the following fees:

7 (a) Apprehending a person on charge of felony, or a fugitive
8 from justice charged with a felony in this state\$10.00

9 (b) Executing a process of contempt in a criminal
10 case when the court excuses the contempt\$1.60

11 (c) Executing a summons upon a witness in behalf
12 of the Commonwealth in a felony case\$3.00

13 (d) Summoning a jury, on order of a court, in a county other than that in which
14 the action is pending, a reasonable allowance to be fixed by the court.

15 (e) Summoning and attending a jury in a case of felony\$2.50

16 (f) For each DNA sample collected and transmitted to the Department of
17 Kentucky State Police in accordance with Section 2 of this Act that results
18 in a usable DNA profile, that is not received in duplicate, and is not deemed
19 unacceptable due to a collection error.....\$5.00

20 (2) No claim for services incidental to examining courts shall be allowed to any sheriff,
21 deputy sheriff, constable, marshal, police officer~~[policeman]~~, or other officer
22 authorized to execute process in felony cases until the grand jury has returned an
23 indictment for a felony.

24 (3) Constables and deputy constables authorized to exercise the powers of a peace
25 officer under KRS 70.325(2) shall be entitled to the fees provided under subsection
26 (1) of this section and shall be subject to the requirements of subsection (2) of this
27 section.