

1 AN ACT relating to DNA.

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***
 6 ***sample***~~[blood or swab specimen]~~ from a person, as prescribed by administrative
 7 regulation, that is required to provide a DNA sample pursuant to KRS 17.170 or
 8 17.510, that shall be submitted to the Department of Kentucky State Police forensic
 9 laboratory for law enforcement identification purposes and inclusion in law
 10 enforcement identification 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 ➔Section 2. KRS 17.170 is amended to read as follows:

- 14 (1) Any DNA sample collected pursuant to the law in effect prior to March 27, 2009,
 15 shall be maintained and used pursuant to this section and KRS 17.175 and 17.510.
- 16 (2) The following persons shall have a DNA sample collected by authorized personnel:
- 17 (a) Any person convicted on or after March 27, 2009, of a felony offense under
 18 the Kentucky Revised Statutes;~~or~~
- 19 (b) Any juvenile who was at least fourteen (14) years of age at the time of the
 20 commission of the offense and who stands adjudicated delinquent of being a
 21 public offender by a court of competent jurisdiction, of:
- 22 1. Any felony offense in KRS Chapter 510;
 - 23 2. Incest as defined in KRS 530.020;
 - 24 3. Criminal attempt or criminal conspiracy to commit an offense identified
 25 in subparagraph 1. or 2. of this paragraph; or
 - 26 4. Being a juvenile sexual offender under KRS 635.510; ***or***
- 27 **(c) Any adult arrested, indicted, or otherwise charged after the effective date of**

1 this Act with any offense classified as a felony offense in the Kentucky
2 Revised Statutes.

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

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

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

22 (d) It shall not be necessary to collect a DNA sample from a person under this
23 section if the person charged with collecting the sample verifies through a
24 mechanism approved by the Department of Kentucky State Police forensic
25 laboratory, both the identity of the charged person, and that the person has
26 previously submitted a DNA sample that remains on file.

27 (e) A DNA sample may be collected by authorized personnel at any point

1 *during the pendency of a charge for a felony offense charge made after the*
2 *effective date of this Act, if a DNA sample was not previously collected*
3 *pursuant to this section, or if a previously taken DNA sample was lost,*
4 *damaged, destroyed, contaminated, or was otherwise unusable.*

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

10 ~~**(5)**~~ ~~**(4)**~~ Any person who is required to provide a DNA sample pursuant to subsection
11 (2) of this section and who is released from custody upon sentencing or
12 adjudication shall immediately report to the local probation and parole office and
13 shall have a DNA sample collected by authorized personnel.

14 ~~**(6)**~~ ~~**(5)**~~ A DNA sample shall be obtained in an approved manner by authorized
15 personnel~~[, a physician, registered nurse, phlebotomist, medical technician, or~~
16 ~~medical technologist,]~~ and packaged with supplies and containers provided by the
17 Department of Kentucky State Police forensic laboratory in accordance with
18 administrative regulations promulgated by the cabinet. No civil liability shall attach
19 to any person authorized to obtain the DNA sample as provided by this section as a
20 result of the act of obtaining the DNA sample from any person, provided the
21 procedure was done according to administrative regulations by the cabinet.

22 ~~**(7)**~~ ~~**(6)**~~ Authorized personnel collecting DNA samples under this section or KRS
23 17.510 are not engaging in the practice of medicine pursuant to KRS 311.550.

24 ~~**(8)**~~ ~~**(7)**~~ Any person required to provide a DNA sample under this section or KRS
25 17.510 who, after receiving notice of the requirement to provide a DNA sample,
26 knowingly refuses to provide such DNA sample, shall be guilty of a Class A
27 misdemeanor for each separate violation of the offense.

1 ~~(9)~~⁽⁸⁾ Any person who tampers or attempts to tamper with any DNA sample
 2 collected under this section or its container without lawful authority shall be guilty
 3 of a Class D felony.

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

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

10 (1) A centralized database of DNA (deoxyribonucleic acid) identification records for
 11 convicted or adjudicated offenders, **adults arrested or indicted for or charged with**
 12 **a felony offense**, crime scene specimens, unidentified human remains, missing
 13 persons, and close biological relatives of missing persons shall be established in the
 14 Department of Kentucky State Police under the direction, control, and supervision
 15 of the Department of Kentucky State Police forensic laboratory. The established
 16 system shall be compatible with the procedures set forth in a national DNA
 17 identification index to ensure data exchange on a national level.

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

25 (3) (a) The Department of Kentucky State Police forensic laboratory shall receive,
 26 analyze, and classify DNA samples received from the Department of
 27 Corrections, the Department of Juvenile Justice, and other sources, and shall

1 file the DNA results in the centralized databases for law enforcement
2 identification and statistical purposes. The department shall analyze and
3 classify all sexual assault evidence collection kits it receives. In cases where a
4 suspect has been identified, the department may give priority to analysis and
5 classification of sexual assault evidence collection kits where the reference
6 standard for comparison is provided with the kit. Except as provided in
7 paragraph (e) of this subsection, by July 1, 2018, the average completion rate
8 for this analysis and classification shall not exceed ninety (90) days, and by
9 July 1, 2020, the average completion rate for this analysis and classification
10 shall not exceed sixty (60) days.

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

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

17 (d) With approval by the secretary of the Justice and Public Safety Cabinet in
18 situations in which an equipment casualty necessitates the expedited
19 acquisition or repair of laboratory equipment required for the analysis of
20 evidence, the acquisition or repair shall be exempt from the Finance and
21 Administration Cabinet's competitive bidding process for both acquisition and
22 repair purposes. Each time the authority granted by this paragraph is used, the
23 equipment acquisition or repair shall be fully documented within thirty (30)
24 days by the agency head in a written or electronic letter to the secretary of the
25 Finance and Administration Cabinet, attached to an ordering or payment
26 document in the state's procurement system, which shall include:

- 27 1. An explanation of the equipment acquired or repaired;

- 1 2. The name of the vendor selected;
- 2 3. The amount of procurement;
- 3 4. Other price quotations obtained; and
- 4 5. The basis for selection of the vendor.

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

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

12 (5) A person whose DNA profile has been included in the data bank pursuant to this
 13 chapter may apply to the Department of Kentucky State Police for removal and
 14 destruction of the DNA record and DNA sample if the arrest or conviction that
 15 led to the taking of the DNA sample or inclusion of the DNA record resulted in
 16 an acquittal, a dismissal, a nolle prosequi, a conviction for a nonfelony offense,
 17 ~~request expungement on the grounds that the conviction or adjudication on which~~
 18 ~~the authority for including the DNA profile was based has been reversed and the~~
 19 ~~case dismissed], or if that] the person successfully completed the pretrial diversion~~
 20 program under KRS 533.258 and the charges were dismissed-diverted. The
 21 Department of Kentucky State Police shall expunge all identifiable information in
 22 the data bank pertaining to the person and destroy all samples from the person upon
 23 receiving a valid expungement request accompanied by such verifying
 24 documentation as the department shall require by administrative regulation
 25 ~~receipt of:~~

- 26 ~~(a) A written request for expungement pursuant to this section; and~~
- 27 ~~(b) Either:~~

- 1 1. ~~A certified copy of the court order reversing and dismissing the~~
- 2 ~~conviction or adjudication; or~~
- 3 2. ~~A certified copy of the court order deeming the charges dismissed-~~
- 4 ~~diverted].~~

5 (6) The cabinet shall promulgate administrative regulations necessary to carry out the
 6 provisions of the DNA database identification system to include procedures for
 7 collection of DNA samples and the database system usage and integrity.

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

10 (8) Any person who disseminates, receives, or otherwise uses or attempts to use
 11 information in the DNA database identification system, knowing that such
 12 dissemination, receipt, or use is for a purpose other than authorized by this section,
 13 shall be guilty of a Class D felony.

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

15 (1) Sheriffs, *jailers*, constables, coroners, marshals, and policemen shall be paid out of
 16 the State Treasury for the following services the following fees:

- 17 (a) Apprehending a person on charge of felony, or a fugitive
- 18 from justice charged with a felony in this state.....\$10.00
- 19 (b) Executing a process of contempt in a criminal
- 20 case when the court excuses the contempt1.60
- 21 (c) Executing a summons upon a witness in behalf
- 22 of the Commonwealth in a felony case3.00
- 23 (d) Summoning a jury, on order of a court, in a county other than that in which
- 24 the action is pending, a reasonable allowance to be fixed by the court.
- 25 (e) Summoning and attending a jury in a case of felony2.50

26 *(f) For each DNA sample collected and transmitted to the Department of*
 27 *Kentucky State Police in accordance with Section 2 of this Act that results*

1 *in a usable DNA profile, that is not received in duplicate, and is not deemed*
2 *unacceptable due to a collection error5.00*

3 (2) No claim for services incidental to examining courts shall be allowed to any sheriff,
4 deputy sheriff, constable, marshal, policeman, or other officer authorized to execute
5 process in felony cases until the grand jury has returned an indictment for a felony.