

**CHAPTER 158****(HB 683)**

AN ACT relating to the justice system and declaring an emergency.

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

➔Section 1. KRS 439.320 is amended to read as follows:

- (1) The Governor shall appoint a Parole Board consisting of **nine (9)**~~seven (7)~~ full-time members and two (2) part-time members, as described in subsection (7) of this section, to be confirmed by the Senate in accordance with KRS 11.160. Each of the two (2) part-time members shall be from a different political party. The Governor shall make each appointment for full-time and part-time members from a list of three (3) names given to him by the Kentucky State Corrections Commission. Each member appointed to the board shall have had at least five (5) years of actual experience in the field of penology, correction work, law enforcement, sociology, law, education, social work, medicine, or a combination thereof, or have served at least five (5) years previously on the Parole Board. No more than **six (6)**~~five (5)~~ board members shall be of the same political party. The board shall be attached to the Justice and Public Safety Cabinet for administrative purposes only. The Department of Corrections shall provide any clerical, stenographic, administrative, and expert staff assistance the board deems necessary to carry out its duties.
- (2) The Governor shall name one (1) full-time member as chairman of the board.
- (3) The full-time members of the board shall give full time to the duties of their office and shall receive necessary traveling expenses and a salary to be determined pursuant to KRS 64.640(2), except the chairman of the board shall receive additional compensation of one thousand dollars (\$1,000) per year for his or her services. Their terms of office shall be four (4) years and until their successors are appointed and have qualified. Their successors shall be appointed thereafter as provided in this section for terms of four (4) years, and a vacancy occurring before expiration of the term of office shall be similarly filled for the unexpired term. The chairman of the board shall serve as such until the expiration of his or her term at which time the Governor shall name his or her successor and designate the chairman of the board. If a vacancy occurs in the chairmanship of the board before the expiration of the term, the Governor may name a successor to serve for the remainder of the unexpired term.
- (4) The organization of the board shall be determined by the chairman and shall be consistent with administrative regulations promulgated pursuant to KRS 439.340. For policy and procedural matters, **five (5)**~~four (4)~~ members shall constitute a quorum. Parole and final parole revocation hearings may be done by panels of the board, subject to the following requirements:
  - (a) If a two (2) member panel is utilized, both members of the panel shall agree on the decision or the matter shall be referred to the full board;
  - (b) If a three (3) member panel is utilized, two (2) of the three (3) members of the panel shall agree on a decision or the matter shall be referred to the full board; and
  - (c) If a panel of four (4) or more members is utilized, a majority of the panel shall agree on a decision or the matter shall be referred to the full board.
- (5) The Governor may not remove any member of the board except for disability, inefficiency, neglect of duty, or malfeasance in office. Before removal, he or she shall give the member a written copy of the charges against him or her and shall fix the time when he or she can be heard in his or her defense, which shall not be less than ten (10) days thereafter. Upon removal, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against the member and the findings thereupon with a record of the proceedings.
- (6) Upon the expiration of the terms of office of the two (2) full-time board members whose terms expire May 23, 1994, the Governor shall appoint two (2) full-time members to serve terms which will expire June 30, 1995. Thereafter, appointments to these two (2) full-time terms shall be for four (4) years and shall be filled as provided for in subsection (3) of this section. The Governor may reappoint present members if they meet the qualifications set forth in subsection (1) of this section.
- (7) The part-time members may participate in considering the grant or revocation of parole at the request of the chairman. No more than one (1) part-time Parole Board member shall serve on any panel of the board as set

forth in subsection (4) of this section. The part-time Parole Board member called upon to serve shall be paid at a per diem rate equal to the per diem rate for the salary of a newly appointed full-time member and shall receive necessary travel expenses. The part-time Parole Board member shall serve for a period of four (4) years from the date of appointment and may be reappointed.

- (8) The Office of Executive Director of the Parole Board is created. The office shall be headed by an executive director who shall be appointed by and directly responsible to the secretary of the Justice and Public Safety Cabinet in matters relating to administration. The executive director shall be responsible for the support services to the Parole Board in the area of financial, personnel, and facilities management; shall provide recommendations on administrative issues affecting the board to the secretary of the Justice and Public Safety Cabinet, the chairman of the Parole Board, and Parole Board members; shall review and draft legislation and promulgate administrative regulations for the board; and shall review parole data and conduct long-range planning as relevant to the planning needs of the board.

➔Section 2. KRS 439.340 is amended to read as follows:

- (1) The board may release on parole persons confined in any adult state penal or correctional institution of Kentucky or sentenced felons incarcerated in county jails eligible for parole. All paroles shall issue upon order of the board duly adopted. As soon as practicable after his *or her* admission to an adult state penal or correctional institution or county jail if he *or she* is a sentenced felon, and at such intervals thereafter as it may determine, the Department of Corrections shall obtain all pertinent information regarding each prisoner, except those not eligible for parole. The information shall include his *or her* criminal record, his *or her* conduct, employment, and attitude in prison, and the reports of physical and mental examinations that have been made. The Department of Corrections shall furnish the circumstances of his *or her* offense and his *or her* previous social history to the institution and the board. The Department of Corrections shall prepare a report on any information it obtains. It shall be the duty of the Department of Corrections to supplement this report with any material the board may request and submit the report to the board.
- (2) Before granting the parole of any prisoner, the board shall consider the pertinent information regarding the prisoner and shall have him *or her* appear before it for interview and hearing. The board in its discretion may hold interviews and hearings for prisoners convicted of Class *C felonies not included within the definition of "violent offender" in KRS 439.3401 and Class D felonies*. The board in its discretion may request the parole board of another state confining prisoners pursuant to KRS 196.610 to interview eligible prisoners and make a parole recommendation to the board. A parole shall be ordered only for the best interest of society and not as an award of clemency, and it shall not be considered a reduction of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been made for his *or her* proper employment or for his *or her* maintenance and care, and when the board believes he *or she* is able and willing to fulfill the obligations of a law abiding citizen. Notwithstanding any statute to the contrary, including KRS 440.330, when a prisoner is otherwise eligible for parole and the board has recommended parole for that prisoner for the reasons set forth in *this subsection* ~~(2) of this section~~, the board may grant parole to any prisoner wanted as a fugitive by any other jurisdiction, and the prisoner shall be released to the detainer from that jurisdiction. Such parole shall not constitute a relinquishment of jurisdiction over the prisoner, and the board in all cases expressly reserves the right to return the prisoner to confinement in a correctional institution of the Commonwealth if the prisoner violates the terms of his or her parole.
- (3) The board shall adopt administrative regulations with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings and all other matters that come before it, or conditions to be imposed upon parolees. Regulations governing the eligibility of prisoners for parole shall be in accordance with professionally accepted ideas of correction and reform and may utilize in part objective, performance-based criteria; however, nothing herein contained shall preclude the board from utilizing its present regulations in conjunction with other factors involved that would relate to the inmate's needs and the safety of the public.
- (4) The board shall insure that sentenced felons confined in county jails are considered for parole within thirty (30) days of their parole eligibility date and the Department of Corrections shall provide the necessary assistance and information to the board in order for it to conduct timely parole reviews.
- (5) In addition to or in conjunction with each hearing conducted under subsection (2) of this section for any prisoner convicted of a Class A, B, or C felony and prior to the granting of a parole to any such prisoner, the parole board shall conduct a hearing of which the following persons shall receive not less than forty-five (45) nor more than ninety (90) days' notice: the Commonwealth's attorney who shall notify the sheriff of every

county and the chief of police of every city and county in which the prisoner committed any Class A, B, or C felony for which he *or she* is imprisoned, and all identified victims of the crimes or the next of kin of any victim who is deceased. Notice to the Commonwealth's attorney shall be by mail, fax, or electronic means at the discretion of the board, and shall be in a manner that ensures receipt at the Commonwealth attorney's business office. Notices received by chiefs of police and sheriffs shall be posted in a conspicuous location where police employed by the department may see it. Notices shall be posted in a manner and at a time that will allow officers to make comment thereon to the Parole Board. Notice to victims or their next of kin shall be made, for prisoners incarcerated prior to July 15, 1986, by mail, fax, or electronic means at the discretion of the board, and shall be in a manner that ensures receipt by the Commonwealth's attorney, who shall forward the notice promptly to the victims or their next of kin at their last known address. For prisoners incarcerated on or after July 15, 1986, notice to the victims or their next of kin shall be by mail from the Parole Board to their last known address as provided by the Commonwealth's attorney to the Parole Board at the time of incarceration of the prisoner. Notice to the victim or the next of kin of subsequent considerations for parole after the initial consideration shall not be sent if the victim or the next of kin gives notice to the board that he or she no longer wants to receive such notices. The notice shall include the time, date, and place of the hearing provided for in this subsection, and the name and address of a person to write if the recipient of the notice desires to attend the hearing or to submit written comments.

- (6) Persons receiving notice as provided for in subsection (5) of this section may submit comments, in person or in writing, to the board upon all issues relating to the parole of the prisoner. The board shall read and consider all comments prior to making its parole decision, if they are received by the board not less than seven (7) days before the date for the hearing. The board shall retain all comments in the prisoner's permanent Parole Board file, and shall consider them in conjunction with any subsequent parole decisions affecting the prisoner. In addition to officers listed in subsection (5) of this section, the crime victims or the next of kin of any victim who is deceased or who is disabled and cannot attend the hearing or the parent or legal guardian of any victim who is a minor may attend the hearing provided for in subsection (5) of this section and present oral and written comments upon all issues relating to the parole of the prisoner, if they have advised the board, in writing received by the board not less than seven (7) days prior to the date set for the hearing, of their intention to attend the hearing. The board shall receive and consider all comments, shall make a record of them which it shall retain in the prisoner's permanent Parole Board file, and shall consider them in conjunction with any subsequent parole decision affecting the prisoner. Persons appearing before the Parole Board pursuant to this subsection may elect to make their presentations outside of the presence of the prisoner.
- (7) Victims of Class D felonies may submit comments in person or in writing to the board upon all issues relating to the parole of a prisoner.
- (8) Any hearing provided for in subsections (5), (6), and (7) of this section shall be open to the public unless the persons having a right to appear before the board as specified in those subsections request closure of hearing for reasons of personal safety, in which event the hearing shall be closed. The time, date, and location of closed hearings shall not be disclosed to the public.
- (9) Except as specifically set forth in this section, nothing in this section shall be deemed to expand or abridge any existing rights of persons to contact and communicate with the Parole Board or any of its members, agents, or employees.
- (10) The unintentional failure by the Parole Board, sheriff, chief of police, or any of its members, agents, or employees or by a Commonwealth's attorney or any of his *or her* agents or employees to comply with any of the provisions of subsections (5), (6), and (8) of this section shall not affect the validity of any parole decision or give rise to any right or cause of action by the crime victim, the prisoner, or any other person.
- (11) No eligible sexual offender within the meaning of KRS 197.400 to 197.440 shall be granted parole unless he *or she* has successfully completed the Sexual Offender Treatment Program.
- (12) Any prisoner who is granted parole after completion of the Sexual Offender Treatment Program shall be required, as a condition of his *or her* parole, to participate in regular treatment in a mental health program approved or operated by the Department of Corrections.
- (13) When an order for parole is issued, it shall recite the conditions thereof.

➔Section 3. KRS 23A.2065 is amended to read as follows:

In addition to the twenty dollar (\$20) fee created by KRS 23A.206, in criminal cases a **ten dollar (\$10)**~~five dollar (\$5)~~ fee shall be added to the costs imposed by KRS 23A.205 that the defendant is required to pay. **The first five dollars (\$5) of each fee collected under this section shall be placed into the general fund, and the remainder of the fee**~~The fees collected under this section~~ shall be allocated to the Cabinet for Health and Family Services for the implementation and operation of a telephonic behavioral health jail triage system as provided in KRS 210.365 and 441.048.

→ Section 4. KRS 24A.1765 is amended to read as follows:

In addition to the twenty dollar (\$20) fee created by KRS 24A.176, in criminal cases a **ten dollar (\$10)**~~five dollar (\$5)~~ fee shall be added to the costs imposed by KRS 24A.175 that the defendant is required to pay. **The first five dollars (\$5) of each fee collected under this section shall be placed into the general fund, and the remainder of the fee**~~The fees collected under this section~~ shall be allocated to the Cabinet for Health and Family Services for the implementation and operation of a telephonic behavioral health jail triage system as provided in KRS 210.365 and 441.048.

→ Section 5. KRS 64.005 is amended to read as follows:

- (1) The clerks of the Supreme Court, the Court of Appeals and the Circuit Courts shall collect a fee of **twenty-five dollars (\$25)**~~four dollars (\$4)~~ for taking, or filing any bond or release on recognizance.
- (2) Such fee shall be deposited in the general fund of the State Treasury.

→ Section 6. KRS 189A.050 is amended to read as follows:

- (1) All persons convicted of violation of KRS 189A.010(1)(a), (b), (c), or (d) shall be sentenced to pay a service fee of **three hundred seventy-five dollars (\$375)**~~three hundred twenty-five dollars (\$325)~~, which shall be in addition to all other penalties authorized by law.
- (2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS 534.020 relating to the method of imposition and KRS 534.060 as to remedies for nonpayment of the fee.
- (3) **The first fifty dollars (\$50) of the each service fee imposed by this section shall be paid into the general fund, and the remainder of** the revenue collected from the service fee imposed by this section shall be utilized as follows:
  - (a) Twelve percent (12%) of the amount collected shall be transferred to the Department of Kentucky State Police forensic laboratory for the acquisition, maintenance, testing, and calibration of alcohol concentration testing instruments and the training of laboratory personnel to perform these tasks;
  - (b) Twenty percent (20%) of the service fee collected pursuant to this section shall be allocated to the Department for Public Advocacy;
  - (c) One percent (1%) shall be transferred to the Prosecutor's Advisory Council for training of prosecutors for the prosecution of persons charged with violations of this chapter and for obtaining expert witnesses in cases involving the prosecution of persons charged with violations of this chapter or any other offense in which driving under the influence is a factor in the commission of the offense charged;
  - (d) Sixteen percent (16%) of the amount collected shall be transferred as follows:
    1. Fifty percent (50%) shall be credited to the traumatic brain injury trust fund established under KRS 211.476; and
    2. Fifty percent (50%) shall be credited to the Cabinet for Health and Family Services, Department for Mental Health and Mental Retardation Services, for the purposes of providing direct services to individuals with brain injuries that may include long-term supportive services and training and consultation to professionals working with individuals with brain injuries. As funding becomes available under this subparagraph, the cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the services permitted by this subparagraph;
  - (e) Any amount specified by a specific statute shall be transferred as provided in that statute;
  - (f) Forty-six percent (46%) of the amount collected shall be transferred to be utilized to fund enforcement of this chapter and for the support of jails, recordkeeping, treatment, and educational programs authorized by this chapter and by the Department for Public Advocacy; and

(g) The remainder of the amount collected shall be transferred to the general fund.

- (4) The amounts specified in subsection (3)(a), (b), (c), and (d) of this section shall be placed in trust and agency accounts that shall not lapse.

➔Section 7. KRS 431.078 is amended to read as follows:

- (1) Any person who has been convicted of a misdemeanor or a violation, or a series of misdemeanors or violations arising from a single incident, may petition the court in which he was convicted for expungement of his misdemeanor or violation record. The person shall be informed of the right at the time of adjudication.
- (2) The petition shall be filed no sooner than five (5) years after the completion of the person's sentence or five (5) years after the successful completion of the person's probation, whichever occurs later.
- (3) Upon the filing of a petition, the court shall set a date for a hearing and shall notify the county attorney; the victim of the crime, if there was an identified victim; and any other person whom the person filing the petition has reason to believe may have relevant information related to the expungement of the record. Inability to locate the victim shall not delay the proceedings in the case or preclude the holding of a hearing or the issuance of an order of expungement.
- (4) The court shall order sealed all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records, if at the hearing the court finds that:
  - (a) The offense was not a sex offense or an offense committed against a child;
  - (b) The person had no previous felony conviction;
  - (c) The person had not been convicted of any other misdemeanor or violation offense in the five (5) years prior to the conviction sought to be expunged;
  - (d) The person had not since the time of the conviction sought to be expunged been convicted of a felony, a misdemeanor, or a violation;
  - (e) No proceeding concerning a felony, misdemeanor, or violation is pending or being instituted against him; and
  - (f) The offense was an offense against the Commonwealth of Kentucky.
- (5) Upon the entry of an order to seal the records, and payment to the circuit clerk of **one hundred dollars (\$100)**~~twenty five dollars (\$25)~~, the proceedings in the case shall be deemed never to have occurred; all index references shall be deleted; the persons and the court may properly reply that no record exists with respect to the persons upon any inquiry in the matter; and the person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application. The **first fifty dollars (\$50) of each** fee collected pursuant to this subsection shall be deposited into **the general fund and the remainder shall be deposited into** a trust and agency account for deputy clerks.
- (6) Copies of the order shall be sent to each agency or official named therein.
- (7) Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of the records and only to those persons named in the petition.
- (8) This section shall be deemed to be retroactive, and any person who has been convicted of a misdemeanor prior to July 14, 1992, may petition the court in which he was convicted, or if he was convicted prior to the inception of the District Court to the District Court in the county where he now resides, for expungement of the record of one (1) misdemeanor offense or violation or a series of misdemeanor offenses or violations arising from a single incident, provided that the offense was not one specified in subsection (4) and that the offense was not the precursor offense of a felony offense for which he was subsequently convicted. This section shall apply only to offenses against the Commonwealth of Kentucky.

➔Section 8. KRS 532.200 is amended to read as follows:

As used in KRS 532.210 to 532.250, unless the context otherwise requires:

- (1) "Home" means the temporary or permanent residence of a defendant consisting of the actual living area. If more than one (1) residence or family is located on a single piece of property, "home" does not include the

residence of any other person who is not part of the social unit formed by the defendant's immediate family. A hospital, nursing care facility, hospice, half-way house, group home, residential treatment facility, or boarding house may serve as a "home" under this section;

- (2) "Home incarceration" means *the use of a monitoring device, approved by the commissioner of the Department of Corrections, to facilitate a prisoner's ability to maintain gainful employment or to participate in programs approved as a condition of his or her incarceration, or both, using the person's home for purposes of confinement;*
- (3) "Violent felony offense" means an offense defined in KRS 507.020 (murder), 507.030 (manslaughter in the first degree), 508.010 (assault in the first degree), 508.020 (assault in the second degree), 509.040 (kidnapping), 510.040 (rape in the first degree), 510.070 (sodomy in the first degree), 510.110 (sexual abuse in the first degree), 511.020 (burglary in the first degree), 513.020 (arson in the first degree), 513.030 (arson in the second degree), 513.040 (arson in the third degree), 515.020 (robbery in the first degree), 515.030 (robbery in the second degree), 520.020 (escape in the first degree), any criminal attempt to commit the offense (KRS 506.010), or conviction as a persistent felony offender (KRS 532.080) when the offender has a felony conviction for any of the above-listed offenses within the five (5) year period preceding the date of the latest conviction;
- (4) "Terminal illness" means a medically recognized disease for which the prognosis is death within six (6) months to a reasonable degree of medical certainty; and
- (5) "Approved monitoring device" means an electronic device or apparatus which is ~~capable of~~ *limited in capability to* recording, *tracking*, or transmitting information as to the prisoner's *location or verifying the prisoner's* presence or non-presence in the home, *or both*. The devices shall be minimally intrusive. *Devices shall not be used without the prisoner's knowledge to record or transmit* ~~no monitoring device capable of recording or transmitting~~.
  - (a) Visual images other than the defendant's face;
  - (b) Oral or wire communications or any auditory sound other than the defendant's voice; or
  - (c) Information as to the prisoner's activities while inside the home ~~;~~  
shall be approved].

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

*As used in this section and Sections 10 and 11 of this Act, the following definitions shall apply:*

- (1) *"DNA sample" or "deoxyribonucleic acid sample" means a blood or swab specimen from a person, as prescribed by administrative regulation, that is required to provide a DNA sample pursuant to Section 10 or 13 of this Act, that shall be submitted to the Department of Kentucky State Police forensic laboratory for law enforcement identification purposes and inclusion in law enforcement identification databases; and*
- (2) *"Authorized personnel" means an agent of state government who is properly trained in DNA sample collection pursuant to administrative regulation.*

➔Section 10. KRS 17.170 is amended to read as follows:

- (1) *Any DNA sample collected pursuant to the law in effect prior to the effective date of this Act shall be maintained and used pursuant to this section and Sections 11 and 13 of this Act.*
- (2) *Any person ~~including a youthful offender as defined in KRS 600.020, detained in the custody of the Department of Juvenile Justice who is~~ convicted *on or after the effective date of this Act* of a felony offense under *the Kentucky Revised Statutes or, being thirteen (13) years of age or older at the time of the commission of the offense, adjudicated as a public offender for an offense identified in KRS 439.340(1) or 530.020 on or after the effective date of this Act* ~~[KRS Chapter 510 or KRS 530.020, shall]~~, or who is in the custody of the Department of Corrections, *the Department of Juvenile Justice, or a local or county jail on or after the effective date of this Act, based upon a conviction or adjudication of an offense identified in this subsection, shall have a DNA sample collected by authorized personnel* ~~[July 14, 1992, under KRS Chapter 510 or KRS 530.020 may, have a sample of blood, an oral swab, or sample obtained through a noninvasive procedure taken by the Department of Corrections or the Department of Juvenile Justice, when appropriate, for~~*

~~DNA (deoxyribonucleic acid) law enforcement identification purposes and inclusion in law enforcement identification databases].~~

- (3) *Any person who is required to register as a sex offender under KRS 17.510 who is not otherwise required to submit to a DNA sample collection under this section or Section 13 of this Act, including those persons convicted of a felony or adjudicated as a public offender on offenses in other jurisdictions as identified in KRS 17.510(6) and (7), shall have a DNA sample collected by authorized personnel.*
- (4) *Any person who is required to provide a DNA sample pursuant to subsection (2) of this section and who is released from custody upon sentencing or adjudication shall immediately report to the local probation and parole office and shall have a DNA sample collected by authorized personnel.*
- (5)~~(2)~~ *A DNA sample~~[The samples]~~ shall be obtained in ~~an~~~~[a medically]~~ approved manner by **authorized personnel**, a physician, registered nurse, phlebotomist, medical technician, or medical technologist, and packaged **with supplies** and~~[submitted in]~~ containers provided by the Department of Kentucky State Police forensic laboratory in accordance with administrative regulations promulgated by the ~~cabinet~~~~[Department of Kentucky State Police forensic laboratory]~~. No civil liability shall attach to any person authorized to obtain the DNA sample as provided by this section as a result of the act of obtaining the DNA sample from any person, provided the procedure was done according to **administrative regulations by the cabinet**~~[generally accepted medical procedures]~~.*
- (6) *Authorized personnel collecting DNA samples under this section or Section 13 of this Act are not engaging in the practice of medicine pursuant to KRS 311.550.*
- (7) *Any person required to provide a DNA sample under this section or Section 13 of this Act who, after receiving notice of the requirement to provide a DNA sample, knowingly refuses to provide such DNA sample, shall be guilty of a Class A misdemeanor for each separate violation of the offense.*

~~(3) The cost of testing shall be paid by the agency or individual making the request for testing.]~~

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

➔Section 11. KRS 17.175 is amended to read as follows:

- (1) A centralized database of DNA (deoxyribonucleic acid) identification records for convicted *or adjudicated offenders*~~[criminals]~~, crime scene specimens, *unidentified human remains*, missing persons, and close biological relatives of missing persons shall be established in the Department of Kentucky State Police under the direction, control, and supervision of the Department of Kentucky State Police forensic laboratory. The established system shall be compatible with the procedures set forth in a national DNA identification index to ensure data exchange on a national level.
- (2) The purpose of the centralized DNA database is to assist federal, state, and local criminal justice and law enforcement agencies within and outside the Commonwealth in the identification, detection, or exclusion of individuals who are subjects of the investigation or prosecution of sex-related crimes, violent crimes, or other crimes and the identification and location of missing and unidentified persons.
- (3) The Department of Kentucky State Police forensic laboratory shall receive, analyze, and classify *DNA samples*~~[of blood]~~ received from the Department of Corrections, *the Department of Juvenile Justice*~~[in compliance with KRS 17.170 and this section,]~~ and~~[samples from]~~ other sources, and shall file the DNA results in the centralized databases for *law enforcement* identification and statistical purposes.
- (4) *DNA identification* records produced from the samples *are not public records but* shall be *confidential and* used only for law enforcement purposes. *DNA identification records*~~[and]~~ shall be exempt from the provisions of KRS 61.870 to 61.884~~[Chapter 6]~~.
- (5) A person whose DNA profile has been included in the data bank pursuant to this chapter may request expungement on the grounds that the~~[felony]~~ conviction *or adjudication* on which the authority for including the DNA profile was based, has been reversed and the case dismissed *or that the person successfully completed the pretrial diversion program under KRS 533.258 and the charges were dismissed-diverted*. The Department of Kentucky State Police shall expunge all identifiable information in the data bank pertaining to the person and destroy all samples from the person upon receipt of:

- (a) A written request for expungement pursuant to this section; and
- (b) *Either*:
  - 1. A certified copy of the court order reversing and dismissing the conviction *or adjudication; or*
  - 2. *A certified copy of the court order deeming the charges dismissed-diverted.*
- (6) The ~~*cabinet*~~~~[Department of Kentucky State Police forensic laboratory]~~ shall promulgate administrative regulations necessary to carry out the provisions of the DNA database identification system to include procedures for collection of DNA samples and the database system usage and integrity.
- (7) *The Department of Kentucky State Police shall destroy all DNA samples that are not entered into the DNA database identification system.*
- (8) Any person who disseminates, receives, or otherwise uses or attempts to use information in the *DNA database identification system*, knowing that such dissemination, receipt, or use is for a purpose other than authorized by *this section*~~[law]~~, shall be guilty of a Class *D felony*~~[A misdemeanor]~~.

➔Section 12. KRS 17.500 is amended to read as follows:

As used in KRS 17.500 to 17.580:

- (1) "Approved provider" means a mental health professional licensed or certified in Kentucky whose scope of practice includes providing mental health treatment services and who is approved by the Sex Offender Risk Assessment Advisory Board, under administrative regulations promulgated by the board, to provide comprehensive sex offender presentence evaluations or treatment to adults and youthful offenders, as defined in KRS 600.020;
- (2) "Cabinet" means the Justice and Public Safety Cabinet;
- (3) (a) Except as provided in paragraph (b) of this subsection, "criminal offense against a victim who is a minor" means any of the following offenses if the victim is under the age of eighteen (18) at the time of the commission of the offense:
  - 1. Kidnapping, as set forth in KRS 509.040, except by a parent;
  - 2. Unlawful imprisonment, as set forth in KRS 509.020, except by a parent;
  - 3. Sex crime;
  - 4. Promoting a sexual performance of a minor, as set forth in KRS 531.320;
  - 5. Human trafficking involving commercial sexual activity as set forth in KRS 529.100;
  - 6. Promoting prostitution, as set forth in KRS 529.040, when the defendant advances or profits from the prostitution of a person under the age of eighteen (18);
  - 7. Use of a minor in a sexual performance, as set forth in KRS 531.310;
  - 8. Sexual abuse, as set forth in KRS 510.120 and 510.130;
  - 9. Unlawful transaction with a minor in the first degree as set forth in KRS 530.064(1)(a);
  - 10. Any offense involving a minor or depictions of a minor as set forth in KRS Chapter 531;
  - 11. Any attempt to commit any of the offenses described in subparagraphs 1. to 10. of this paragraph; and
  - 12. Solicitation to commit any of the offenses described in subparagraphs 1. to 10. of this paragraph;
- (b) Conduct which is criminal only because of the age of the victim shall not be considered a criminal offense against a victim who is a minor if the perpetrator was under the age of eighteen (18) at the time of the commission of the offense;
- (4) "Law enforcement agency" means any lawfully organized investigative agency, sheriff's office, police unit, or police force of federal, state, county, urban-county government, charter county, city, consolidated local government, or a combination of these, responsible for the detection of crime and the enforcement of the general criminal federal or state laws;



- (5) "Registrant" means:
- (a) Any person eighteen (18) years of age or older at the time of the offense or any youthful offender, as defined in KRS 600.020, who has committed:
    1. A sex crime; or
    2. A criminal offense against a victim who is a minor; or
  - (b) Any person required to register under KRS 17.510; or
  - (c) Any sexually violent predator; or
  - (d) Any person whose sexual offense has been diverted pursuant to KRS 533.250, until the diversionary period is successfully completed;
- (6) "Registrant information" means the name, including any lawful name change together with the previous name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, fingerprints, *DNA sample*, a photograph, aliases used, residence, electronic mail address and any instant messaging, chat, or other Internet communication name identities, a brief description of the crime or crimes committed, and other information the cabinet determines, by administrative regulation, may be useful in the identification of registrants;
- (7) "Residence" means any place where a person sleeps. For the purposes of this statute, a registrant may have more than one (1) residence. A registrant is required to register each residence address;
- (8) "Sex crime" means:
- (a) A felony offense defined in KRS Chapter 510, or KRS 530.020, 530.064(1)(a), 531.310, or 531.320;
  - (b) A felony attempt to commit a felony offense specified in paragraph (a) of this subsection; or
  - (c) A federal felony offense, a felony offense subject to a court-martial of the United States Armed Forces, or a felony offense from another state or a territory where the felony offense is similar to a felony offense specified in paragraph (a) of this subsection;
- (9) "Sexual offender" means any person convicted of, pleading guilty to, or entering an Alford plea to a sex crime as defined in this section, as of the date the verdict is entered by the court;
- (10) "Sexually violent predator" means any person who has been subjected to involuntary civil commitment as a sexually violent predator, or a similar designation, under a state, territory, or federal statutory scheme;
- (11) "The board" means the Sex Offender Risk Assessment Advisory Board created under KRS 17.554; ~~and~~
- (12) "Victim" has the same meaning as in KRS 421.500;
- (13) *"DNA sample" or "deoxyribonucleic acid sample" means a blood or swab specimen from a person, as prescribed by administrative regulation, that is required to provide a DNA sample pursuant to Section 10 or 13 of this Act, that shall be submitted to the Department of Kentucky State Police forensic laboratory for law enforcement identification purposes and inclusion in law enforcement identification databases; and*
- (14) *"Authorized personnel" means an agent of state government who is properly trained in DNA sample collection pursuant to administrative regulation.*

➔Section 13. KRS 17.510 is amended to read as follows:

- (1) The cabinet shall develop and implement a registration system for registrants which includes creating a new computerized information file to be accessed through the Law Information Network of Kentucky.
- (2) A registrant shall, on or before the date of his or her release by the court, the parole board, the cabinet, or any detention facility, register with the appropriate local probation and parole office in the county in which he or she intends to reside. The person in charge of the release shall facilitate the registration process.
- (3) Any person required to register pursuant to subsection (2) of this section shall be informed of the duty to register by the court at the time of sentencing if the court grants probation or conditional discharge or does not impose a penalty of incarceration, or if incarcerated, by the official in charge of the place of confinement upon release. The court and the official shall require the person to read and sign any form that may be required by

the cabinet, stating that the duty of the person to register has been explained to the person. The court and the official in charge of the place of confinement shall require the releasee to complete the acknowledgment form and the court or the official shall retain the original completed form. The official shall then send the form to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601.

- (4) The court or the official shall order the person to register with the appropriate local probation and parole office which shall obtain the person's fingerprints, *DNA sample*, and ~~the person's~~ photograph. Thereafter, the registrant shall return to the appropriate local probation and parole office not less than one (1) time every two (2) years in order for a new photograph to be obtained, and the registrant shall pay the cost of updating the photo for registration purposes. ***Any registrant who has not provided a DNA sample as of the effective date of this Act shall provide a DNA sample to the appropriate local probation and parole office when the registrant appears for a new photograph to be obtained.*** Failure to comply with this requirement shall be punished as set forth in subsection (11) of this section.
- (5)
  - (a) The appropriate probation and parole office shall send the registration form containing the registrant information, fingerprint card, and photograph, and any special conditions imposed by the court or the Parole Board, to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601. ***The appropriate probation and parole office shall send the DNA sample to the Department of Kentucky State Police forensic laboratory in accordance with administrative regulations promulgated by the cabinet.***
  - (b) The Information Services Center, upon request by a state or local law enforcement agency, shall make available to that agency registrant information, including a person's fingerprints and photograph, where available, as well as any special conditions imposed by the court or the Parole Board.
  - (c) Any employee of the Justice and Public Safety Cabinet who disseminates, or does not disseminate, registrant information in good faith compliance with the requirements of this subsection shall be immune from criminal and civil liability for the dissemination or lack thereof.
- (6) Any person who has been convicted in a court of any state or territory, a court of the United States, or a similar conviction from a court of competent jurisdiction in any other country, or a court martial of the United States Armed Forces of a sex crime or criminal offense against a victim who is a minor and who has been notified of the duty to register by that state, territory, or court, or who has been committed as a sexually violent predator under the laws of another state, laws of a territory, or federal laws, or has a similar conviction from a court of competent jurisdiction in any other country, shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register with the appropriate local probation and parole office in the county of residence within five (5) working days of relocation. No additional notice of the duty to register shall be required of any official charged with a duty of enforcing the laws of this Commonwealth.
- (7) If a person is required to register under federal law or the laws of another state or territory, or if the person has been convicted of an offense under the laws of another state or territory that would require registration if committed in this Commonwealth, that person upon changing residence from the other state or territory of the United States to the Commonwealth or upon entering the Commonwealth for employment, to carry on a vocation, or as a student shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register within five (5) working days with the appropriate local probation and parole office in the county of residence, employment, vocation, or schooling. A person required to register under federal law or the laws of another state or territory shall be presumed to know of the duty to register in the Commonwealth. As used in this subsection, "employment" or "carry on a vocation" includes employment that is full-time or part-time for a period exceeding fourteen (14) days or for an aggregate period of time exceeding thirty (30) days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. As used in this subsection, "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.
- (8) The registration form shall be a written statement signed by the person which shall include registrant information, including an up-to-date photograph of the registrant for public dissemination.
- (9) For purposes of KRS 17.500 to 17.580 and 17.991, a post office box number shall not be considered an address.

- (10) (a) If the residence address of any registrant changes, but the registrant remains in the same county, the person shall register, on or before the date of the change of address, with the appropriate local probation and parole office in the county in which he or she resides.
- (b) 1. If the registrant changes his or her residence to a new county, the person shall notify his or her current local probation and parole office of the new residence address on or before the date of the change of address.
2. The registrant shall also register with the appropriate local probation and parole office in the county of his or her new residence no later than five (5) working days after the date of the change of address.
- (c) 1. As soon as a probation and parole office learns of the person's new address under paragraph (b)1. of this subsection, that probation and parole office shall notify the appropriate local probation and parole office in the county of the new address of the effective date of the new address.
2. As soon as a probation and parole office learns of the person's new address under paragraph (b)2. of this subsection, that office shall forward this information as set forth under subsection (5) of this section.
- (11) Any person required to register under this section who knowingly violates any of the provisions of this section or prior law is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (12) Any person required to register under this section or prior law who knowingly provides false, misleading, or incomplete information is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (13) (a) The cabinet shall verify the addresses of individuals required to register under this section. Verification shall occur at least once every ninety (90) days for a person required to register under KRS 17.520(2) and at least once every calendar year for a person required to register under KRS 17.520(3). If the cabinet determines that a person has moved without providing his or her new address to the appropriate local probation and parole office or offices as required under subsection (10)(a) and (b) of this section, the cabinet shall notify the appropriate local probation and parole office of the new address. The office shall then forward this information as set forth under subsection (5) of this section. The cabinet shall also notify the appropriate court, Parole Board, and appropriate Commonwealth's attorney, sheriff's office, probation and parole office, corrections agency, and law enforcement agency responsible for the investigation of the report of noncompliance.
- (b) An agency that receives notice of the noncompliance from the cabinet under paragraph (a) of this subsection:
1. Shall consider revocation of the parole, probation, or conditional discharge of any person released under its authority; and
2. Shall notify the appropriate county or Commonwealth's Attorney for prosecution.

➔Section 14. KRS 17.580 is amended to read as follows:

- (1) The Department of Kentucky State Police shall establish a Web site available to the public. The Web site shall display:
- (a) The registrant information, except for information that identifies a victim, *DNA samples*, fingerprints, and Social Security numbers, obtained by the Information Services Center, Department of Kentucky State Police, under KRS 17.510;
- (b) The sex offender information, except for information that identifies a victim, *DNA samples*, Social Security numbers, and vehicle registration data, obtained by the Information Services Center, Department of Kentucky State Police, under KRS 17.510 prior to April 11, 2000; and
- (c) The registrant's conviction, the elements of the offense for which the registrant was convicted, whether the registrant is currently on probation or parole, and whether the registrant is compliant or noncompliant.

The Web site shall be updated every day except for Saturdays, Sundays, and state holidays.

- (2) The information pertaining to an individual shall be maintained on the Web site so long as that individual is registered in accordance with KRS 17.500 to 17.580.
- (3) The following language shall be prominently displayed on the Web site: "UNDER KRS 525.070 AND 525.080, USE OF INFORMATION OBTAINED FROM THIS WEB SITE TO HARASS A PERSON IDENTIFIED ON THIS WEB SITE IS A CRIMINAL OFFENSE PUNISHABLE BY UP TO NINETY (90) DAYS IN THE COUNTY JAIL. MORE SEVERE CRIMINAL PENALTIES APPLY FOR MORE SEVERE CRIMES COMMITTED AGAINST A PERSON IDENTIFIED ON THIS WEB SITE."
- (4)
  - (a) Any Department of Kentucky State Police employee who disseminates, or does not disseminate, registrant information or sex offender information in good faith compliance with the requirements of this section shall be immune from criminal and civil liability for the dissemination or lack thereof.
  - (b) Any person, including an employee of a sheriff's office, acting in good faith in disseminating, or not disseminating, information previously disseminated by the Department of Kentucky State Police shall be immune from criminal and civil liability for the dissemination or lack thereof.
- (5) The cabinet shall establish a toll-free telephone number for a person to call to learn the identity of the Web site created in this section and the location of public access to the Web site in the county where the person resides.
- (6) In addition to the Web site, a local law enforcement agency may provide personal notification regarding the registrants located in its jurisdiction. Any notification shall contain the warning specified in subsection (3) of this section.

➔Section 15. The following KRS sections are repealed:

17.171 Application of KRS 17.170 to DNA evidence in cases involving minors.

17.172 Application of KRS 17.170 to DNA evidence in burglary cases.

17.173 Application of KRS 17.170 to DNA evidence in capital cases and certain felony cases.

17.174 Application of KRS 17.171 and 17.172 to public offenders.

17.177 Effective dates and implementation of legislation relating to DNA testing.

➔Section 16. Whereas the effective and efficient protection of the public from crime is a fundamental duty of government and a needless delay in the implementation of this Act delays that protection, an emergency is declared to exist and this Act takes effect July 1, 2008.

**Signed by Governor April 24, 2008.**