

CHAPTER 105**(HB 321)**

AN ACT relating to the collection, storage, and use of DNA samples.

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

➔Section 1. KRS 17.169 is repealed and reenacted to read as follows:

As used in this section and KRS 17.170 and 17.175, 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 KRS 17.170 or 17.510, 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 2. KRS 17.170 is repealed, reenacted, and amended to read as follows:

- (1) Any DNA sample collected pursuant to the law in effect prior to *the effective date of this Act* ~~[July 1, 2008,]~~ shall be maintained and used pursuant to this section and KRS 17.175 and 17.510.
- (2) ***The following persons shall have a DNA sample collected by authorized personnel:***
 - (a) Any person convicted on or after *the effective date of this Act* ~~[July 1, 2008,]~~ of a felony offense under under the Kentucky Revised Statutes; or
 - (b) ***Any juvenile who was at least fourteen (14) years of age at the time of the commission of the offense and who stands adjudicated delinquent of being a public offender by a court of competent jurisdiction, of:***
 1. ***Any felony offense in KRS Chapter 510;***
 2. ***Incest as defined in KRS 530.020;***
 3. ***Criminal attempt or criminal conspiracy to commit an offense identified in subparagraph 1. or 2. of this paragraph; or***
 4. ***Being a juvenile sexual offender under KRS 635.510*** ~~[, 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 439.3401(1) or 530.020 on or after July 1, 2008, 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 July 1, 2008, based upon a conviction or adjudication of an offense identified in this subsection, shall have a DNA sample collected by authorized personnel].~~
- (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 KRS 17.510, 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) A DNA sample shall be obtained in an approved manner by authorized personnel, a physician, registered nurse, phlebotomist, medical technician, or medical technologist, and packaged with supplies and containers provided by the Department of Kentucky State Police forensic laboratory in accordance with administrative regulations promulgated by the cabinet. 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.
- (6) Authorized personnel collecting DNA samples under this section or KRS 17.510 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 KRS 17.510 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.
- (8) 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 3. KRS 17.175 is repealed and reenacted to read as follows:

- (1) A centralized database of DNA (deoxyribonucleic acid) identification records for convicted or adjudicated offenders, 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 received from the Department of Corrections, the Department of Juvenile Justice, and 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 shall be exempt from the provisions of KRS 61.870 to 61.884.
- (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 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 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, shall be guilty of a Class D felony.

➔Section 4. KRS 17.500 is repealed and reenacted 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;
 - (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 KRS 17.170 or 17.510, 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 5. KRS 17.510 is repealed, reenacted, and 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 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 July 1, ~~2009~~~~[2008]~~, 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 6. KRS 17.580 is repealed and reenacted 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 7. 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 8. It is the intent of the General Assembly that the Department of Kentucky State Police may retain all DNA samples collected on or after July 1, 2008, pursuant to 2008 Ky. Acts, ch. 9 to 16.

➔Section 9. It is the intent of the General Assembly that the Department of Kentucky State Police may utilize DNA samples collected on or after July 1, 2008, pursuant to 2008 Ky. Acts, ch. 9 to 16 for the purposes specified therein.

➔Section 10. 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 shall take effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Signed by the Governor March 27, 2009.