

AN ACT relating to DNA.

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

➔Section 1. KRS 17.169 is amended 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 ***biological sample***~~[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 ***or local*** government who is properly trained in DNA sample collection pursuant to administrative regulation.

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

- (1) Any DNA sample collected pursuant to the law in effect prior to March 27, 2009, 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 March 27, 2009, of a felony offense 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; ***or***

(c) Any adult arrested, indicted, or otherwise charged after the effective date of

this Act with a felony offense.

- (3) (a) It shall be the duty of the jailer or other local correctional official into whose custody a person arrested for a felony offense is committed to have a DNA sample collected by authorized personnel as part of the person's booking process and to submit that sample to the Department of Kentucky State Police forensic laboratory.
- (b) It shall be the duty of an arresting peace officer who takes a person arrested for a felony offense directly before a judge without booking the person into a jail to have a DNA sample collected by authorized personnel and to submit that sample to the Department of Kentucky State Police forensic laboratory.
- (c) If a person making his or her initial appearance before a judge pursuant to an arrest, indictment, summons, or other process for committing a felony offense has not previously had a sample of his or her DNA collected under this subsection, it shall be the duty of the sheriff to have a DNA sample collected by authorized personnel as part of that person's initial appearance and to submit that sample to the Department of Kentucky State Police forensic laboratory. The judge before whom the person is appearing shall issue any orders necessary to effectuate this subsection.
- (d) It shall not be necessary to collect a DNA sample from a person under this section if the person charged with collecting the sample verifies through a mechanism approved by the Department of Kentucky State Police forensic laboratory both the identity of the charged person and that the person has previously submitted a DNA sample that remains on file.
- (e) A DNA sample may be collected by authorized personnel at any point during the pendency of a felony charge made after the effective date of this Act if a DNA sample was not previously collected under this section or if a

previously taken DNA sample was lost, damaged, destroyed, contaminated, or was otherwise unusable.

(4) 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.

~~(5)(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.

~~(6)(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.

~~(7)(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.

~~(8)(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.

~~(9)(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.

(10) A DNA sample obtained in good faith shall be deemed to have been obtained in accordance with the requirements of this chapter, and the legitimate use of the information in the furtherance of a criminal investigation is authorized until the sample is removed or destroyed from the DNA database identification system pursuant to Section 3 of this Act.

➔Section 3. KRS 17.175 is amended 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.
Analysis of DNA samples obtained pursuant to this chapter is not authorized for identification of any medical or genetic disorder.
- (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) **The court shall order the Department of Kentucky State Police to remove and destroy the DNA sample, DNA record, and any other identifiable information of a person from the DNA database identification system if:**

(a) The person's arrest or conviction that led to the taking of the DNA sample or inclusion of the DNA record in the DNA database identification system resulted in an acquittal, a dismissal, or a conviction for only nonfelony offenses;

~~[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~~

(b) [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 64.060 is amended to read as follows:

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

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

(b) Executing a process of contempt in a criminal
case when the court excuses the contempt1.60

(c) Executing a summons upon a witness in behalf
of the Commonwealth in a felony case3.00

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

(e) Summoning and attending a jury in a case of felony2.50

**(f) For each DNA sample collected and transmitted to the Department of
Kentucky State Police in accordance with Section 2 of this Act that results
in a usable DNA profile, that is not received in duplicate, and is not deemed
unacceptable due to a collection error5.00**

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