

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 sample***~~[blood~~
 6 ~~or swab specimen]~~ from a person, as prescribed by administrative regulation, that is
 7 required to provide a DNA sample pursuant to KRS 17.170 or 17.510, that shall be
 8 submitted to the Department of Kentucky State Police forensic laboratory for law
 9 enforcement identification purposes and inclusion in law enforcement identification
 10 databases; and
- 11 (2) "Authorized personnel" means an agent of state ***or local*** government who is
 12 properly trained in DNA sample collection pursuant to administrative regulation.

13 ➔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 a felony offense.*

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

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

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

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

24 *(e) A DNA sample may be collected by authorized personnel at any point*
25 *during the pendency of a felony charge made after the effective date of this*
26 *Act if a DNA sample was not previously collected under this section or if a*
27 *previously taken DNA sample was lost, damaged, destroyed, contaminated,*

1 or was otherwise unusable.

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

7 ~~**(5)**~~ ~~(4)~~ Any person who is required to provide a DNA sample pursuant to subsection
8 (2) of this section and who is released from custody upon sentencing or adjudication
9 shall immediately report to the local probation and parole office and shall have a
10 DNA sample collected by authorized personnel.

11 ~~**(6)**~~ ~~(5)~~ A DNA sample shall be obtained in an approved manner by authorized
12 personnel~~[, a physician, registered nurse, phlebotomist, medical technician, or~~
13 ~~medical technologist,]~~ and packaged with supplies and containers provided by the
14 Department of Kentucky State Police forensic laboratory in accordance with
15 administrative regulations promulgated by the cabinet. No civil liability shall attach
16 to any person authorized to obtain the DNA sample as provided by this section as a
17 result of the act of obtaining the DNA sample from any person, provided the
18 procedure was done according to administrative regulations by the cabinet.

19 ~~**(7)**~~ ~~(6)~~ Authorized personnel collecting DNA samples under this section or KRS
20 17.510 are not engaging in the practice of medicine pursuant to KRS 311.550.

21 ~~**(8)**~~ ~~(7)~~ Any person required to provide a DNA sample under this section or KRS
22 17.510 who, after receiving notice of the requirement to provide a DNA sample,
23 knowingly refuses to provide such DNA sample, shall be guilty of a Class A
24 misdemeanor for each separate violation of the offense.

25 ~~**(9)**~~ ~~(8)~~ Any person who tampers or attempts to tamper with any DNA sample
26 collected under this section or its container without lawful authority shall be guilty
27 of a Class D felony.

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

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

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

14 (2) The purpose of the centralized DNA database is to assist federal, state, and local
15 criminal justice and law enforcement agencies within and outside the
16 Commonwealth in the identification, detection, or exclusion of individuals who are
17 subjects of the investigation or prosecution of sex-related crimes, violent crimes, or
18 other crimes and the identification and location of missing and unidentified persons.

19 **Analysis of DNA samples obtained pursuant to this chapter is not authorized for**
20 **identification of any medical or genetic disorder.**

21 (3) (a) The Department of Kentucky State Police forensic laboratory shall receive,
22 analyze, and classify DNA samples received from the Department of
23 Corrections, the Department of Juvenile Justice, and other sources, and shall
24 file the DNA results in the centralized databases for law enforcement
25 identification and statistical purposes. The department shall analyze and
26 classify all sexual assault evidence collection kits it receives. In cases where a
27 suspect has been identified, the department may give priority to analysis and

1 classification of sexual assault evidence collection kits where the reference
2 standard for comparison is provided with the kit. Except as provided in
3 paragraph (e) of this subsection, by July 1, 2018, the average completion rate
4 for this analysis and classification shall not exceed ninety (90) days, and by
5 July 1, 2020, the average completion rate for this analysis and classification
6 shall not exceed sixty (60) days.

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

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

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

- 23 1. An explanation of the equipment acquired or repaired;
- 24 2. The name of the vendor selected;
- 25 3. The amount of procurement;
- 26 4. Other price quotations obtained; and
- 27 5. The basis for selection of the vendor.

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

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

8 (5) **The court shall order the Department of Kentucky State Police to remove and**
 9 **destroy the DNA sample, DNA record, and any other identifiable information of a**
 10 **person from the DNA database identification system if:**

11 **(a) The person's arrest or conviction that led to the taking of the DNA sample**
 12 **or inclusion of the DNA record in the DNA database identification system**
 13 **resulted in an acquittal, a dismissal, or a conviction for only nonfelony**
 14 **offenses;**~~[A person whose DNA profile has been included in the data bank~~
 15 ~~pursuant to this chapter may request expungement on the grounds that the~~
 16 ~~conviction or adjudication on which the authority for including the DNA~~
 17 ~~profile was based has been reversed and the case dismissed,] or~~

18 **(b) [that]The person successfully completed the pretrial diversion program under**
 19 **KRS 533.258 and the charges were dismissed-diverted.[The Department of**
 20 **Kentucky State Police shall expunge all identifiable information in the data**
 21 **bank pertaining to the person and destroy all samples from the person upon**
 22 **receipt of:**

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

24 (b) ~~— Either:~~

25 1. ~~— A certified copy of the court order reversing and dismissing the~~
 26 ~~conviction or adjudication; or~~

27 2. ~~— A certified copy of the court order deeming the charges dismissed-~~

1 ~~diverted.]~~

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

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

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

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

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

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

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

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

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

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

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

27 (2) No claim for services incidental to examining courts shall be allowed to any sheriff,

1 deputy sheriff, constable, marshal, policeman, or other officer authorized to execute
2 process in felony cases until the grand jury has returned an indictment for a felony.