

1 AN ACT relating to booking procedures in local jails.

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~~
5 apply]:

6 (1) "DNA sample" or "deoxyribonucleic acid sample" means a buccal[~~blood or~~] swab
7 specimen from a person, as prescribed by administrative regulation, that is required
8 to provide a DNA sample pursuant to KRS 17.170 or 17.510, that shall be
9 submitted to the Department of Kentucky State Police forensic laboratory for law
10 enforcement identification purposes and inclusion in law enforcement identification
11 databases;~~[and]~~

12 (2) "Authorized personnel" means an agent of state or local government who is
13 properly trained in DNA sample collection pursuant to administrative regulation;
14 and

15 (3) "Rapid DNA instruments" means instrumentation that carries out a fully
16 automated process to derive a DNA analysis from a DNA sample.

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

18 (1) Any DNA sample collected pursuant to the law in effect prior to March 27, 2009,
19 shall be maintained and used pursuant to this section and KRS 17.175 and 17.510.

20 (2) The following persons shall have a DNA sample collected by authorized personnel:
21 (a) Any person convicted on or after March 27, 2009, of a felony offense under
22 the Kentucky Revised Statutes;~~[or]~~

23 (b) Any juvenile who was at least fourteen (14) years of age at the time of the
24 commission of the offense and who stands adjudicated delinquent of being a
25 public offender by a court of competent jurisdiction, of:

26 1. Any felony offense in KRS Chapter 510;
27 2. Incest as defined in KRS 530.020;

1 3. Criminal attempt or criminal conspiracy to commit an offense identified
2 in subparagraph 1. or 2. of this paragraph; or
3 4. Being a juvenile sexual offender under KRS 635.510; **or**
4 (c) **Any adult arrested or indicted for, or otherwise charged with, any offense**
5 **classified as a felony offense in the Kentucky Revised Statutes after the**
6 **effective date of this Act.**
7 (3) (a) **The jailer or other local correctional official into whose custody a person**
8 **arrested for a felony offense is committed shall have a DNA sample**
9 **collected from the person by authorized personnel as part of the person's**
10 **booking process and shall submit that sample to the Department of**
11 **Kentucky State Police forensic laboratory using its provided collection kit.**
12 (b) **It shall not be necessary to collect a DNA sample from a person under this**
13 **section if the person charged with collecting the sample verifies through a**
14 **mechanism approved by the Department of Kentucky State Police forensic**
15 **laboratory both the identity of the charged person and that the person has**
16 **previously submitted a DNA sample that remains on file.**
17 (c) **A DNA sample may be collected by authorized personnel at any point**
18 **during the pendency of a charge for a felony offense made after the**
19 **effective date of this Act if a DNA sample was not previously collected**
20 **pursuant to this section, or if a previously collected DNA sample was lost,**
21 **damaged, destroyed, contaminated, or was otherwise unusable.**
22 (d) 1. **Authorized personnel may collect a second DNA sample to be**
23 **processed utilizing rapid DNA instruments from a person arrested or**
24 **indicted for, or otherwise charged with, a felony offense.**
25 2. **The cabinet shall promulgate administrative regulations in**
26 **accordance with KRS Chapter 13A to establish standards for the**
27 **operation of rapid DNA instruments by local governments.**

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

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

10 **(6)** **(a)** A DNA sample shall be obtained in an approved manner by authorized
11 personnel, a physician, registered nurse, phlebotomist, medical technician, or
12 medical technologist, and packaged with supplies and containers provided by
13 the Department of Kentucky State Police forensic laboratory in accordance
14 with administrative regulations promulgated by the cabinet **in accordance**
15 **with KRS Chapter 13A.**

16 **(b)** ~~No~~ Civil liability shall **not** attach to any person authorized to obtain the
17 DNA sample as provided by this section as a result of the act of obtaining the
18 DNA sample from any person ~~if, provided~~ the procedure was
19 **performed**~~done~~ according to administrative regulations by the cabinet.

20 **(7)** Authorized personnel collecting DNA samples under this section or KRS
21 17.510 are not engaging in the practice of medicine pursuant to KRS 311.550.

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

26 **(9)** Any person who tampers or attempts to tamper with any DNA sample
27 collected under this section or its container without lawful authority shall be guilty

1 of a Class D felony.

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

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

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

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

22 **(b) Analysis of DNA samples obtained pursuant to this chapter:**

23 **1. Shall be used solely for criminal justice and law enforcement**
24 **identification, exclusion, and investigative purpose; and**
25 **2. Is not authorized for:**

26 **a. Any non-criminal justice purpose, including but not limited to**
27 **insurance or employment determinations; or**

b. Identification of any medical or genetic disorder.

2 (3) (a) The Department of Kentucky State Police forensic laboratory shall:

3 1. Receive, analyze, and classify DNA samples received from the

4 Department of Corrections, the Department of Juvenile Justice, and

5 other sources; ~~[, and shall]~~

6 2. File the DNA results in the centralized databases for law enforcement

7 identification and statistical purposes; ~~[and]~~ ~~[The department shall]~~

8 3. Analyze and classify all sexual assault evidence collection kits it

9 receives. In cases where a suspect has been identified, the department

10 may give priority to analysis and classification of sexual assault

11 evidence collection kits where the reference standard for comparison is

12 provided with the kit. Except as provided in paragraph (e) of this

13 subsection, ~~[by July 1, 2018, the average completion rate for this~~

14 ~~analysis and classification shall not exceed ninety (90) days, and by July~~

15 ~~1, 2020,]~~the average completion rate for this analysis and classification

16 shall not exceed sixty (60) days.

17 (b) Failure to meet the completion time goals established in paragraph (a)3. of

18 this subsection shall not be a basis for a dismissal of a criminal action or a bar

19 to the admissibility of evidence.

20 (c) The Department of Kentucky State Police shall, by August 1 of each year,

21 report to the Legislative Research Commission the yearly average completion

22 rate for the immediately preceding five (5) fiscal years.

23 (d) With approval by the secretary of the Justice and Public Safety Cabinet in

24 situations in which an equipment casualty necessitates the expedited

25 acquisition or repair of laboratory equipment required for the analysis of

26 evidence, the acquisition or repair shall be exempt from the Finance and

27 Administration Cabinet's competitive bidding process for both acquisition and

1 repair purposes. Each time the authority granted by this paragraph is used, the
2 equipment acquisition or repair shall be fully documented within thirty (30)
3 days by the agency head in a written or electronic letter to the secretary of the
4 Finance and Administration Cabinet, attached to an ordering or payment
5 document in the state's procurement system, which shall include:

6 1. An explanation of the equipment acquired or repaired;
7 2. The name of the vendor selected;
8 3. The amount of procurement;
9 4. Other price quotations obtained; and
10 5. The basis for selection of the vendor.

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

15 (4) DNA identification records produced from the samples are not public records but
16 shall be confidential and used only for law enforcement purposes. DNA
17 identification records shall be exempt from ~~the provisions of~~ KRS 61.870 to
18 61.884.

19 (5) DNA identification records produced from evidence collected as a result of an
20 examination performed under KRS 216B.400 that are voluntarily submitted solely
21 for elimination purposes shall not be checked against or included in the centralized
22 database created pursuant to this section or any other database.

23 (6) (a) 1. The Department of Kentucky State Police forensic laboratory shall
24 automatically expunge all identifiable information in the DNA
25 database and destroy all DNA samples pertaining to a person whose
26 DNA profile was included in the DNA database pursuant to this
27 chapter if the charge or conviction results in:

- 1 a. *An acquittal;*
- 2 b. *A dismissal;*
- 3 c. *A nolle prosequi;*
- 4 d. *A conviction for a nonfelony offense; or*
- 5 e. *Successful completion of a pretrial diversion program under*
- 6 *KRS 533.258 and designation of the charges as dismissed-*
- 7 *diverted.*
- 8 2. *The expungement required by this paragraph shall occur upon receipt*
- 9 *of official notice of final disposition from the court or other*
- 10 *appropriate reporting agency and shall not require a written request*
- 11 *from the individual.*
- 12 (b) *A person whose DNA profile was included in the data bank pursuant to this*
- 13 *chapter as a result of a felony conviction that is subsequently expunged*
- 14 *under KRS 431.073 shall submit a written request for expungement to the*
- 15 *Department of Kentucky State Police forensic laboratory. The request shall*
- 16 *be accompanied by a certified documentation of the court order granting*
- 17 *expungement. Upon receipt of a valid request and required documentation,*
- 18 *the department shall expunge all identifiable information in the data bank*
- 19 *pertaining to the person and destroy all DNA samples from the person*
- 20 A person whose DNA profile has been included in the data bank pursuant to this
- 21 chapter may request expungement on the grounds that the conviction or
- 22 adjudication on which the authority for including the DNA profile was based
- 23 has been reversed and the case dismissed, or that the person successfully
- 24 completed the pretrial diversion program under KRS 533.258 and the charges
- 25 were dismissed diverted. The Department of Kentucky State Police shall
- 26 expunge all identifiable information in the data bank pertaining to the person
- 27 and destroy all samples from the person upon receipt of:

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

2 (b) ~~Either:~~

3 1. ~~A certified copy of the court order reversing and dismissing the~~

4 ~~conviction or adjudication; or~~

5 2. ~~A certified copy of the court order deeming the charges dismissed~~

6 ~~diverted].~~

7 (7) The cabinet shall promulgate administrative regulations *in accordance with KRS*
8 *Chapter 13A* necessary to carry out the provisions of the DNA database
9 identification system to include procedures for collection of DNA samples and the
10 database system usage and integrity.

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

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