

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)~~~~(4)~~ 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)~~~~(5)~~ **(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)~~~~(6)~~ 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)~~~~(7)~~ 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)~~~~(8)~~ 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**

1                                   **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                    ~~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~~<sup>[such]</sup>  
15       dissemination, receipt, or use is for a purpose other than authorized by this section,  
16       shall be guilty of a Class D felony.