

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 **biological sample**~~[blood~~  
7 ~~or swab specimen]~~ from a person, as prescribed by administrative regulation, that is  
8 required 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) An arresting peace officer who takes any person arrested for a felony  
8           offense directly before a judge without booking the person into a jail shall  
9           have a DNA sample collected from the person by authorized personnel and  
10          shall submit that sample to the Department of Kentucky State Police  
11          forensic laboratory.

12       (b) The jailer or other local correctional official into whose custody a person  
13          arrested for a felony offense is committed shall have a DNA sample  
14          collected from the person by authorized personnel as part of the person's  
15          booking process and shall submit that sample to the Department of  
16          Kentucky State Police forensic laboratory.

17       (c) If a person making his or her initial court appearance before a judge  
18          pursuant to an arrest, indictment, summons, or other process for the charge  
19          of a felony offense has not previously had a sample of his or her DNA  
20          collected pursuant to this subsection, the sheriff shall have a DNA sample  
21          collected from the person by authorized personnel as part of that person's  
22          initial appearance. The sheriff shall submit the DNA samples collected to  
23          the Department of Kentucky State Police forensic laboratory. The judge  
24          before whom the person is appearing shall issue any orders necessary to  
25          effectuate the requirements of this paragraph.

26       (d) It shall not be necessary to collect a DNA sample from a person under this  
27          section if the person charged with collecting the sample verifies through a

1 mechanism approved by the Department of Kentucky State Police forensic  
2 laboratory both the identity of the charged person and that the person has  
3 previously submitted a DNA sample that remains on file.

4 (e) A DNA sample may be collected by authorized personnel at any point  
5 during the pendency of a charge for a felony offense made after the  
6 effective date of this Act if a DNA sample was not previously collected  
7 pursuant to this section, or if a previously collected DNA sample was lost,  
8 damaged, destroyed, contaminated, or was otherwise unusable.

9 (f) 1. Authorized personnel may collect a second DNA sample to be  
10 processed utilizing rapid DNA instruments from a person arrested or  
11 indicted for, or otherwise charged with, a felony offense.

12 2. The second DNA sample shall be destroyed after processing, and  
13 resulting profiles shall be stored and searched only in the state DNA  
14 database.

15 3. The cabinet shall promulgate regulations in accordance with KRS  
16 Chapter 13A to establish standards for the operation of rapid DNA  
17 instruments by local governments.

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

23 (5)~~(4)~~ Any person who is required to provide a DNA sample pursuant to subsection  
24 (2) of this section and who is released from custody upon sentencing or  
25 adjudication shall immediately report to the local probation and parole office and  
26 shall have a DNA sample collected by authorized personnel.

27 (6)~~(5)~~ A DNA sample shall be obtained in an approved manner by authorized

1       personnel~~[, a physician, registered nurse, phlebotomist, medical technician, or~~  
2       ~~medical technologist,]~~ and packaged with supplies and containers provided by the  
3       Department of Kentucky State Police forensic laboratory in accordance with  
4       administrative regulations promulgated by the cabinet in accordance with KRS  
5       Chapter 13A. ~~[No]~~ Civil liability shall not attach to any person authorized to obtain  
6       the DNA sample as provided by this section as a result of the act of obtaining the  
7       DNA sample from any person if~~[, provided]~~ the procedure was done according to  
8       administrative regulations by the cabinet.

9       ~~(7)~~~~(6)~~     Authorized personnel collecting DNA samples under this section or KRS  
10       17.510 are not engaging in the practice of medicine pursuant to KRS 311.550.

11       ~~(8)~~~~(7)~~     Any person required to provide a DNA sample under this section or KRS  
12       17.510 who, after receiving notice of the requirement to provide a DNA sample,  
13       knowingly refuses to provide such DNA sample, shall be guilty of a Class A  
14       misdemeanor for each separate violation of the offense.

15       ~~(9)~~~~(8)~~     Any person who tampers or attempts to tamper with any DNA sample  
16       collected under this section or its container without lawful authority shall be guilty  
17       of a Class D felony.

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

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

24       (1) A centralized database of DNA (deoxyribonucleic acid) identification records for  
25       convicted or adjudicated offenders, adults arrested for, indicted for, or charged  
26       with a felony offense, crime scene specimens, unidentified human remains, missing  
27       persons, and close biological relatives of missing persons shall be established in the

1 Department of Kentucky State Police under the direction, control, and supervision  
2 of the Department of Kentucky State Police forensic laboratory. The established  
3 system shall be compatible with the procedures set forth in a national DNA  
4 identification index to ensure data exchange on a national level.

5 (2) The purpose of the centralized DNA database is to assist federal, state, and local  
6 criminal justice and law enforcement agencies within and outside the  
7 Commonwealth in the identification, detection, or exclusion of individuals who are  
8 subjects of the investigation or prosecution of sex-related crimes, violent crimes, or  
9 other crimes, and the identification and location of missing and unidentified  
10 persons. Analysis of DNA samples obtained pursuant to this chapter is not  
11 authorized for identification of any medical or genetic disorder.

12 (3) (a) The Department of Kentucky State Police forensic laboratory shall receive,  
13 analyze, and classify DNA samples received from the Department of  
14 Corrections, the Department of Juvenile Justice, and other sources, and shall  
15 file the DNA results in the centralized databases for law enforcement  
16 identification and statistical purposes. The department shall analyze and  
17 classify all sexual assault evidence collection kits it receives. In cases where a  
18 suspect has been identified, the department may give priority to analysis and  
19 classification of sexual assault evidence collection kits where the reference  
20 standard for comparison is provided with the kit. Except as provided in  
21 paragraph (e) of this subsection, ~~by July 1, 2018, the average completion rate~~  
22 ~~for this analysis and classification shall not exceed ninety (90) days, and by~~  
23 ~~July 1, 2020, the average completion rate for this analysis and classification~~  
24 shall not exceed sixty (60) days.

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

- 1 (c) The Department of Kentucky State Police shall, by August 1 of each year,  
2 report to the Legislative Research Commission the yearly average completion  
3 rate for the immediately preceding five (5) fiscal years.
- 4 (d) With approval by the secretary of the Justice and Public Safety Cabinet in  
5 situations in which an equipment casualty necessitates the expedited  
6 acquisition or repair of laboratory equipment required for the analysis of  
7 evidence, the acquisition or repair shall be exempt from the Finance and  
8 Administration Cabinet's competitive bidding process for both acquisition and  
9 repair purposes. Each time the authority granted by this paragraph is used, the  
10 equipment acquisition or repair shall be fully documented within thirty (30)  
11 days by the agency head in a written or electronic letter to the secretary of the  
12 Finance and Administration Cabinet, attached to an ordering or payment  
13 document in the state's procurement system, which shall include:
- 14 1. An explanation of the equipment acquired or repaired;
  - 15 2. The name of the vendor selected;
  - 16 3. The amount of procurement;
  - 17 4. Other price quotations obtained; and
  - 18 5. The basis for selection of the vendor.
- 19 (e) To the extent appropriated funds are insufficient to meet the average  
20 completion time goals established in paragraph (a) of this subsection, the  
21 Department of Kentucky State Police forensic laboratory shall no longer be  
22 required to meet the average completion time goals.
- 23 (4) DNA identification records produced from the samples are not public records but  
24 shall be confidential and used only for law enforcement purposes. DNA  
25 identification records shall be exempt from ~~the provisions of~~ KRS 61.870 to  
26 61.884.
- 27 (5) DNA identification records produced from evidence collected as a result of an

1 examination performed under KRS 216B.400 that are voluntarily submitted solely  
2 for elimination purposes shall not be checked against or included in the centralized  
3 database created pursuant to this section or any other database.

4 (6) A person whose DNA profile has been included in the data bank pursuant to this  
5 chapter may apply to the Department of Kentucky State Police for removal and  
6 destruction of the DNA record and DNA sample if the arrest or conviction that  
7 led to the taking of the DNA sample or inclusion of the DNA record resulted in  
8 an acquittal, a dismissal, a nolle prosequi, a conviction for a nonfelony offense,  
9 ~~request expungement on the grounds that the conviction or adjudication on which~~  
10 ~~the authority for including the DNA profile was based has been reversed and the~~  
11 ~~case dismissed], or if [that] the person successfully completed the pretrial diversion~~  
12 ~~program under KRS 533.258 and the charges were dismissed-diverted. The~~  
13 ~~Department of Kentucky State Police shall expunge all identifiable information in~~  
14 ~~the data bank pertaining to the person and destroy all samples from the person upon~~  
15 receiving a valid expungement request accompanied by any verifying  
16 documentation the department shall require by administrative regulation~~receipt~~  
17 ~~of:~~

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

19 (b) ~~Either:~~

20 1. ~~A certified copy of the court order reversing and dismissing the~~  
21 ~~conviction or adjudication; or~~

22 2. ~~A certified copy of the court order deeming the charges dismissed-~~  
23 ~~diverted].~~

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

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

3 (9) Any person who disseminates, receives, or otherwise uses or attempts to use  
4 information in the DNA database identification system, knowing that ~~the~~<sup>such</sup>  
5 dissemination, receipt, or use is for a purpose other than authorized by this section,  
6 shall be guilty of a Class D felony.

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

8 (1) Sheriffs, jailers, constables granted peace officer powers, coroners, marshals, and  
9 police officers~~[policemen]~~ shall be paid out of the State Treasury for the following  
10 services the following fees:

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

13 (b) Executing a process of contempt in a criminal  
14 case when the court excuses the contempt .....\$1.60

15 (c) Executing a summons upon a witness in behalf  
16 of the Commonwealth in a felony case .....\$3.00

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

19 (e) Summoning and attending a jury in a case of felony .....\$2.50

20 (f) For each DNA sample collected and transmitted to the Department of  
21 Kentucky State Police in accordance with Section 2 of this Act that results  
22 in a usable DNA profile, that is not received in duplicate, and is not deemed  
23 unacceptable due to a collection error.....\$5.00

24 (2) ~~A~~<sup>No</sup> claim for services incidental to examining courts shall not be allowed to any  
25 sheriff, deputy sheriff, constable, marshal, police officer~~[policeman]~~, or other  
26 officer authorized to execute process in felony cases until the grand jury has  
27 returned an indictment for a felony.



- 1 (3) Constables and deputy constables authorized to exercise the powers of a peace  
2 officer under KRS 70.325(2) shall be entitled to the fees provided under subsection  
3 (1) of this section and shall be subject to the requirements of subsection (2) of this  
4 section.