

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1077**

Introduced by Rogert, 16.

Read first time January 22, 2008

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the DNA Identification Information Act; to  
2 amend sections 29-4102, 29-4103, 29-4104, 29-4106, and  
3 29-4109, Revised Statutes Cumulative Supplement, 2006; to  
4 provide for the collection of DNA samples upon arrest  
5 for certain offenses as prescribed; and to repeal the  
6 original sections.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 29-4102, Revised Statutes Cumulative  
2 Supplement, 2006, is amended to read:

3           29-4102 The Legislature finds that DNA data banks are  
4 an important tool in criminal investigations, in the exclusion  
5 of individuals who are the subject of criminal investigations  
6 or prosecutions, in deterring and detecting recidivist acts, and  
7 in locating and identifying missing persons and human remains.  
8 Several states have enacted laws requiring persons ~~convicted of~~  
9 arrested for certain crimes, especially sex offenses, to provide  
10 genetic samples for DNA typing tests. Moreover, it is the policy  
11 of this state to assist federal, state, and local criminal justice  
12 and law enforcement agencies in the identification and detection  
13 of individuals in criminal investigations and in locating and  
14 identifying missing persons and human remains. It is in the best  
15 interest of this state to establish a State DNA Data Base for DNA  
16 records and a State DNA Sample Bank as a repository for DNA samples  
17 from individuals ~~convicted of~~ arrested for felony sex offenses  
18 and other specified offenses and from individuals for purposes of  
19 assisting in locating and identifying missing persons and human  
20 remains.

21           Sec. 2. Section 29-4103, Revised Statutes Cumulative  
22 Supplement, 2006, is amended to read:

23           29-4103 For purposes of the DNA Identification  
24 Information Act:

25           (1) Combined DNA Index System means the Federal Bureau

1 of Investigation's national DNA identification index system that  
2 allows the storage and exchange of DNA records submitted by state  
3 and local forensic DNA laboratories;

4 (2) DNA means deoxyribonucleic acid which is located in  
5 the cells and provides an individual's personal genetic blueprint.  
6 DNA encodes genetic information that is the basis of human heredity  
7 and forensic identification;

8 (3) DNA record means the DNA identification information  
9 stored in the State DNA Data Base or the Combined DNA Index System  
10 which is derived from DNA typing test results;

11 (4) DNA sample means a blood, tissue, or bodily fluid  
12 sample provided by any person covered by the DNA Identification  
13 Information Act for analysis or storage, or both;

14 (5) DNA typing tests means the laboratory procedures  
15 which evaluate the characteristics of a DNA sample which are of  
16 value in establishing the identity of an individual;

17 (6) Felony sex offense means a felony offense, or an  
18 attempt, conspiracy, or solicitation to commit a felony offense,  
19 under any of the following:

20 (a) Kidnapping of a minor pursuant to section 28-313,  
21 except when the person is the parent of the minor and was not  
22 ~~convicted of~~ arrested for any other offense in this subdivision;

23 (b) Incest of a minor pursuant to section 28-703;

24 (c) Sexual assault in the first or second degree pursuant  
25 to section 28-319 or 28-320;

1           (d) Sexual assault of a child in the second or third  
2 degree pursuant to section 28-320.01;

3           (e) Sexual assault of a child in the first degree  
4 pursuant to section 28-319.01;

5           (f) Sexual assault of a vulnerable adult pursuant to  
6 subdivision (1)(c) of section 28-386; and

7           (g) False imprisonment of a minor in the first degree  
8 pursuant to section 28-314, except when the person is the parent of  
9 the minor and was not ~~convicted of~~ arrested for any other offense  
10 in this subdivision;

11           (7) Law enforcement agency includes a police department,  
12 a town marshal, a county sheriff, and the Nebraska State Patrol;

13           (8) Other specified offense means an offense, or an  
14 attempt, conspiracy, or solicitation to commit an offense, under  
15 any of the following:

16           (a) Murder in the first degree pursuant to section  
17 28-303;

18           (b) Murder in the second degree pursuant to section  
19 28-304;

20           (c) Manslaughter pursuant to section 28-305;

21           (d) Assault in the first degree pursuant to section  
22 28-308;

23           (e) Assault in the second degree pursuant to section  
24 28-309;

25           (f) Using a deadly weapon to commit a felony pursuant to

1 section 28-1205;

2 (g) Any violation relating to explosives pursuant to  
3 section 28-1215, 28-1217, 28-1219, 28-1220, 28-1221, 28-1222,  
4 28-1223, or 28-1224;

5 ~~(d)~~ (h) Stalking pursuant to sections 28-311.02 to  
6 28-311.05;

7 ~~(e)~~ (i) Burglary pursuant to section 28-507 provided that  
8 the real estate is a dwelling place intended for human occupancy;  
9 or

10 ~~(f)~~ (j) Robbery pursuant to section 28-324; and

11 (9) Released means any release, parole, furlough, work  
12 release, prerelease, or release in any other manner from a prison,  
13 a jail, or any other detention facility or institution.

14 Sec. 3. Section 29-4104, Revised Statutes Cumulative  
15 Supplement, 2006, is amended to read:

16 29-4104 The State DNA Data Base is established. The  
17 Nebraska State Patrol shall administer the State DNA Data Base and  
18 shall provide DNA records to the Federal Bureau of Investigation  
19 for storage and maintenance in the Combined DNA Index System.  
20 The patrol shall provide for liaison with the Federal Bureau of  
21 Investigation and other law enforcement agencies in regard to the  
22 state's participation in the Combined DNA Index System. The State  
23 DNA Data Base shall store and maintain DNA records related to:

24 (1) Forensic casework, including, but not limited to,  
25 forensic casework relating to missing persons, relatives of missing

1 persons, and unidentified human remains;

2 (2) ~~Convicted~~ Arrested offenders required to provide a  
3 DNA sample under the DNA Identification Information Act;

4 (3) Anonymous DNA records used for research or quality  
5 control; and

6 (4) Missing persons, relatives of missing persons, and  
7 unidentified human remains.

8 Sec. 4. Section 29-4106, Revised Statutes Cumulative  
9 Supplement, 2006, is amended to read:

10 29-4106 ~~(1)~~ A person who is ~~convicted of~~ arrested for  
11 a felony sex offense or other specified offense on or after July  
12 ~~14, 2006,~~ the effective date of this act, who does not have  
13 a DNA sample available for use in the State DNA Sample Bank,  
14 shall have a DNA sample collected after being taken into custody.

15 ~~+(a) Upon intake to a prison, jail, or other detention facility~~  
16 ~~or institution to which such person is sentenced. If the person~~  
17 ~~is already confined at the time of sentencing, the person shall~~  
18 ~~have a DNA sample collected immediately after the sentencing. Such~~  
19 ~~DNA samples shall be collected at the place of incarceration or~~  
20 ~~confinement. Such person shall not be released unless and until a~~  
21 ~~DNA sample has been collected.~~ + or

22 ~~(b) As a condition for any sentence which will not~~  
23 ~~involve an intake into a prison, jail, or other detention facility~~  
24 ~~or institution. Such DNA samples shall be collected at a detention~~  
25 ~~facility or institution as specified by the court. Such person~~

1 shall not be released unless and until a DNA sample has been  
2 collected.

3           ~~(2) A person who has been convicted of a felony sex~~  
4 ~~offense or other specified offense before July 14, 2006, who does~~  
5 ~~not have a DNA sample available for use in the State DNA Sample~~  
6 ~~Bank, and who is still serving a term of confinement for such~~  
7 ~~offense on July 14, 2006, shall not be released prior to the~~  
8 ~~expiration of his or her maximum term of confinement unless and~~  
9 ~~until a DNA sample has been collected.~~

10           Sec. 5. Section 29-4109, Revised Statutes Cumulative  
11 Supplement, 2006, is amended to read:

12           29-4109 A person whose DNA record has been included  
13 in the State DNA Data Base pursuant to the DNA Identification  
14 Information Act may request expungement on the grounds that no  
15 criminal charges were filed, the criminal charges were dismissed,  
16 the criminal case was dismissed, the person was acquitted of the  
17 criminal charges, or, if the person was convicted of the criminal  
18 charges, the conviction on which the authority for including such  
19 person's DNA record was based has been reversed and the case  
20 dismissed. The Nebraska State Patrol shall purge all DNA records  
21 and identifiable information in the data base pertaining to the  
22 person and destroy all DNA samples from the person upon receipt  
23 of a written request for expungement pursuant to this section and  
24 a letter from the prosecutor who determined that no charges were  
25 warranted or who dismissed the charges or a certified copy of the

1 final court order dismissing the case or reversing and dismissing  
2 the conviction, whichever is applicable.

3           Within ten calendar days ~~of~~ after granting expungement,  
4 the Nebraska State Patrol shall provide written notice of such  
5 expungement pursuant to subsection (4) of section 29-4108, to any  
6 person to whom DNA records and samples have been made available.  
7 The Nebraska State Patrol shall establish procedures for providing  
8 notice of certification of expungement to the person who was  
9 granted expungement.

10           Sec. 6. Original sections 29-4102, 29-4103, 29-4104,  
11 29-4106, and 29-4109, Revised Statutes Cumulative Supplement, 2006,  
12 are repealed.