

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1054

Introduced by Hilkemann, 4; Krist, 10.

Read first time January 20, 2016

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend section
- 2 29-4109, Reissue Revised Statutes of Nebraska, and sections 29-4103
- 3 and 29-4106, Revised Statutes Cumulative Supplement, 2014; to change
- 4 provisions relating to the DNA Identification Information Act; to
- 5 harmonize provisions; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-4103, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 29-4103 For purposes of the DNA Identification Information Act:

4 (1) Combined DNA Index System means the Federal Bureau of
5 Investigation's national DNA identification index system that allows the
6 storage and exchange of DNA records submitted by state and local forensic
7 DNA laboratories;

8 (2) Crime of violence means any of the following offenses, including
9 any attempt or conspiracy to commit any of the following offenses:

10 (a) Arson in the first degree under section 28-502;

11 (b) Assault in the first degree under section 28-308;

12 (c) Assault in the second degree under section 28-309;

13 (d) Kidnapping under section 28-313;

14 (e) Manslaughter under section 28-305;

15 (f) Murder in the first degree under section 28-303;

16 (g) Murder in the second degree under section 28-304;

17 (h) Sexual assault in the first degree under section 28-319;

18 (i) Sexual assault in the second or third degree under section
19 28-320;

20 (j) Sexual assault of a child in the first degree under section
21 28-319.01;

22 (k) Sexual assault of a child in the second or third degree under
23 section 28-320.01;

24 (l) Child enticement by means of an electronic communication device
25 under section 28-320.02;

26 (m) Sexual abuse of an inmate or parolee in the first degree under
27 section 28-322.02;

28 (n) Sexual abuse of an inmate or parolee in the second degree under
29 section 28-322.03;

30 (o) Sexual abuse of a protected individual under section 28-322.04;

31 (p) Robbery under section 28-324;

- 1 (q) Violation of the Homicide of the Unborn Child Act;
- 2 (r) Burglary under section 28-507; or
- 3 (s) Incest with a person who is under eighteen years of age pursuant
- 4 to section 28-703;

5 (3 2) DNA means deoxyribonucleic acid which is located in the cells
6 and provides an individual's personal genetic blueprint. DNA encodes
7 genetic information that is the basis of human heredity and forensic
8 identification;

9 (4 3) DNA record means the DNA identification information stored in
10 the State DNA Data Base or the Combined DNA Index System which is derived
11 from DNA typing test results;

12 (5 4) DNA sample means a blood, tissue, or bodily fluid sample
13 provided by any person covered by the DNA Identification Information Act
14 for analysis or storage, or both;

15 (6 5) DNA typing tests means the laboratory procedures which
16 evaluate the characteristics of a DNA sample which are of value in
17 establishing the identity of an individual;

18 (7 6) Law enforcement agency includes a police department, a town
19 marshal, a county sheriff, and the Nebraska State Patrol;

20 (8 7) Other specified offense means misdemeanor stalking pursuant to
21 sections 28-311.02 to 28-311.05 or false imprisonment in the second
22 degree pursuant to section 28-315 or an attempt, conspiracy, or
23 solicitation to commit stalking pursuant to sections 28-311.02 to
24 28-311.05, false imprisonment in the first degree pursuant to section
25 28-314, false imprisonment in the second degree pursuant to section
26 28-315, knowing and intentional sexual abuse of a vulnerable adult
27 pursuant to subdivision (1)(c) of section 28-386, or a violation of the
28 Sex Offender Registration Act pursuant to section 29-4011; and

29 (9 8) Released means any release, parole, furlough, work release,
30 prerelease, or release in any other manner from a prison, a jail, or any
31 other detention facility or institution.

1 Sec. 2. Section 29-4106, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 29-4106 (1) A person who is convicted of a felony offense or other
4 specified offense on or after July 15, 2010, who does not have a DNA
5 sample available for use in the State DNA Sample Bank, shall, at his or
6 her own expense, have a DNA sample collected:

7 (a) Upon intake to a prison, jail, or other detention facility or
8 institution to which such person is sentenced. If the person is already
9 confined at the time of sentencing, the person shall have a DNA sample
10 collected immediately after the sentencing. Such DNA sample shall be
11 collected at the place of incarceration or confinement. Such person shall
12 not be released unless and until a DNA sample has been collected; or

13 (b) As a condition for any sentence which will not involve an intake
14 into a prison, jail, or other detention facility or institution. Such DNA
15 samples shall be collected as follows:

16 (i) In any county containing a city of the metropolitan class, a
17 person placed on probation or who received a penalty of a fine or time
18 served shall have such DNA sample collected by a probation officer at a
19 probation office. Such person shall not be released unless and until a
20 DNA sample has been collected; and

21 (ii) In all other counties, a person placed on probation shall have
22 such DNA sample collected by a probation officer at a probation office,
23 and a person not placed on probation who receives a penalty of a fine or
24 time served shall have such DNA sample collected by the county sheriff.
25 Such person shall not be released unless and until a DNA sample has been
26 collected.

27 (2) A person who has been convicted of a felony offense or other
28 specified offense before July 15, 2010, who does not have a DNA sample
29 available for use in the State DNA Sample Bank, and who is still serving
30 a term of confinement or probation for such felony offense or other
31 specified offense on July 15, 2010, shall not be released prior to the

1 expiration of his or her maximum term of confinement or revocation or
2 discharge from his or her probation unless and until a DNA sample has
3 been collected.

4 (3) A person who is placed under arrest, on or after July 15, 2016,
5 for a crime of violence alleged to have occurred in this state who does
6 not have a DNA sample available for use in the State DNA Sample Bank,
7 shall have a DNA sample collected after the arrest;

8 (~~4~~ 3) A person who is serving a term of probation and has a DNA
9 sample collected pursuant to this section shall pay all costs associated
10 with the collection of the DNA sample.

11 (~~5~~ 4) If the court waives the cost of taking a DNA sample for any
12 reason, a county jail or other county detention facility or institution
13 collecting the DNA sample shall not be held financially responsible for
14 the cost of the DNA sample kit.

15 Sec. 3. Section 29-4109, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 29-4109 A person whose DNA record has been included in the State DNA
18 Data Base pursuant to the DNA Identification Information Act may request
19 expungement on the grounds that (1) the person was not charged with a
20 crime of violence for which the person was arrested within one year
21 following arrest, (2) all criminal charges filed as a result of an arrest
22 for a crime of violence were dismissed with prejudice, (3) all criminal
23 charges filed as a result of an arrest for a crime of violence were
24 dismissed and the statute of limitations for the offense related to the
25 arrest has lapsed, (4) the person was acquitted of all criminal charges
26 filed as a result of the arrest for a crime of violence, or (5) the
27 conviction on which the authority for including such person's DNA record
28 was based has been reversed and the case dismissed. The Nebraska State
29 Patrol shall purge all DNA records and identifiable information in the
30 data base pertaining to the person and destroy all DNA samples from the
31 person upon receipt of a written request for expungement pursuant to this

1 section and a certified copy of the final court order reversing and
2 dismissing the conviction.

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

9 Sec. 4. Original section 29-4109, Reissue Revised Statutes of
10 Nebraska, and sections 29-4103 and 29-4106, Revised Statutes Cumulative
11 Supplement, 2014, are repealed.