

AMENDMENTS TO LB496

Introduced by Judiciary.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 29-4102, Reissue Revised Statutes of Nebraska, is
4 amended to read:

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

21 Sec. 2. Section 29-4103, Reissue Revised Statutes of Nebraska, is
22 amended to read:

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

24 (1) Burglary means burglary with intent to commit a felony pursuant
25 to section 28-507;

26 (2) ~~(1)~~ Combined DNA Index System means the Federal Bureau of
27 Investigation's national DNA identification index system that allows the

1 storage and exchange of DNA records submitted by state and local forensic
2 DNA laboratories;

3 (3) Crime of violence means any of the following offenses when
4 charged as a felony:

5 (a) Arson in the first degree pursuant to section 28-502;

6 (b) Assault in the first degree pursuant to section 28-308;

7 (c) Assault in the second degree pursuant to section 28-309;

8 (d) Kidnapping pursuant to section 28-313;

9 (e) Manslaughter pursuant to section 28-305;

10 (f) Murder in the first degree pursuant to section 28-303;

11 (g) Murder in the second degree pursuant to section 28-304;

12 (h) Sexual assault in the first degree pursuant to section 28-319;

13 (i) Sexual assault of a child in the first degree pursuant to
14 section 28-319.01;

15 (j) Sexual assault in the second degree pursuant to section 28-320;

16 (k) Sexual assault of a child in the second or third degree pursuant
17 to section 28-320.01;

18 (l) Child enticement by means of an electronic communication device
19 pursuant to section 28-320.02;

20 (m) Sexual abuse of an inmate or parolee in the first degree
21 pursuant to section 28-322.02;

22 (n) Sexual abuse of an inmate or parolee in the second degree
23 pursuant to section 28-322.03;

24 (o) Sexual abuse of a protected individual pursuant to section
25 28-322.04;

26 (p) Robbery pursuant to section 28-324;

27 (q) Violation of the Homicide of the Unborn Child Act pursuant to
28 sections 28-388 through 28-393;

29 (r) Incest with a person who is under eighteen years of age pursuant
30 to section 28-703; or

31 (s) Any attempt or conspiracy to commit an offense listed in

1 subdivision (2)(a) through (r) of this section;

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

6 (5) ~~(3)~~ DNA record means the DNA identification information stored
7 in the State DNA Data Base or the Combined DNA Index System which is
8 derived from DNA typing test results;

9 (6) ~~(4)~~ DNA sample means a blood, tissue, or bodily fluid sample
10 provided by any person covered by the DNA Identification Information Act
11 for analysis or storage, or both;

12 (7) ~~(5)~~ DNA typing tests means the laboratory procedures which
13 evaluate the characteristics of a DNA sample which are of value in
14 establishing the identity of an individual;

15 (8) ~~(6)~~ Law enforcement agency includes a police department, a town
16 marshal, a county sheriff, and the Nebraska State Patrol;

17 (9) ~~(7)~~ Other specified offense means misdemeanor stalking pursuant
18 to sections 28-311.02 to 28-311.05 or false imprisonment in the second
19 degree pursuant to section 28-315 or an attempt, conspiracy, or
20 solicitation to commit stalking pursuant to sections 28-311.02 to
21 28-311.05, false imprisonment in the first degree pursuant to section
22 28-314, false imprisonment in the second degree pursuant to section
23 28-315, knowing and intentional sexual abuse of a vulnerable adult or
24 senior adult pursuant to subdivision (1)(c) of section 28-386, or a
25 violation of the Sex Offender Registration Act pursuant to section
26 29-4011; and

27 (10) ~~(8)~~ Released means any release, parole, furlough, work release,
28 prerelease, or release in any other manner from a prison, a jail, or any
29 other detention facility or institution.

30 Sec. 3. Section 29-4104, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 29-4104 The State DNA Data Base is established. The Nebraska State
2 Patrol shall administer the State DNA Data Base and shall provide DNA
3 records to the Federal Bureau of Investigation for storage and
4 maintenance in the Combined DNA Index System. The patrol shall provide
5 for liaison with the Federal Bureau of Investigation and other law
6 enforcement agencies in regard to the state's participation in the
7 Combined DNA Index System. The State DNA Data Base shall store and
8 maintain DNA records related to:

9 (1) Forensic casework, including, but not limited to, forensic
10 casework relating to missing persons, relatives of missing persons, and
11 unidentified human remains;

12 (2) Convicted or charged offenders required to provide a DNA sample
13 under the DNA Identification Information Act;

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

15 (4) Missing persons, relatives of missing persons, and unidentified
16 human remains.

17 Sec. 4. Section 29-4106, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 29-4106 (1) A person who is convicted of a felony offense or other
20 specified offense on or after July 15, 2010, who does not have a DNA
21 sample available for use in the State DNA Sample Bank, shall, at his or
22 her own expense, have a DNA sample collected:

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

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

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

6 (ii) In all other counties, a person placed on probation shall have
7 such DNA sample collected by a probation officer at a probation office,
8 and a person not placed on probation who receives a penalty of a fine or
9 time served shall have such DNA sample collected by the county sheriff.
10 Such person shall not be released unless and until a DNA sample has been
11 collected.

12 (2) A person who has been convicted of a felony offense or other
13 specified offense before July 15, 2010, who does not have a DNA sample
14 available for use in the State DNA Sample Bank, and who is still serving
15 a term of confinement or probation for such felony offense or other
16 specified offense on July 15, 2010, shall not be released prior to the
17 expiration of his or her maximum term of confinement or revocation or
18 discharge from his or her probation unless and until a DNA sample has
19 been collected.

20 (3)(a) An adult who is charged with a crime of violence or burglary
21 on or after the operative date of this act, who does not have a DNA
22 sample available for use in the State DNA Sample Bank, shall have a DNA
23 sample collected by a law enforcement official at the receiving criminal
24 detention facility during the booking process. If the first appearance of
25 such person in court for the alleged crime of violence or burglary is not
26 due to arrest but by citation or summons, the court shall order
27 collection of a DNA sample.

28 (b) A DNA sample collected under this subsection shall not be tested
29 or placed in the State DNA Data Base until after a judicial determination
30 of probable cause on the crime of violence or burglary has been made or a
31 hearing to determine probable cause has been waived, unless requested or

1 consented to by the person whose DNA sample is to be collected. If the
2 charges for the crime of violence or burglary are determined to be
3 unsupported by probable cause, the DNA sample shall be immediately
4 destroyed and notice that the sample was destroyed shall be sent to the
5 person whose DNA sample was collected and counsel of record for such
6 person.

7 (4) ~~(3)~~ A person who is serving a term of probation and has a DNA
8 sample collected pursuant to this section shall pay all costs associated
9 with the collection of the DNA sample.

10 (5) ~~(4)~~ If the court waives the cost of taking a DNA sample for any
11 reason, a county jail or other county detention facility or institution
12 collecting the DNA sample shall not be held financially responsible for
13 the cost of the DNA sample kit.

14 Sec. 5. Section 29-4106.01, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 29-4106.01 (1) A person required to submit a DNA sample pursuant to
17 subsection (1) or (2) of section 29-4106 shall be given the choice of
18 having the sample collected by a blood draw or a buccal cell collection
19 kit. Any person who collects a DNA sample pursuant to section 29-4106
20 shall honor the choice of collection method made by the person providing
21 the DNA sample. If the person required to submit the DNA sample does not
22 indicate a preference as to the method of collection, either method may
23 be used to collect the sample.

24 (2) A person required to submit a DNA sample pursuant to subsection
25 (3) of section 29-4106 shall have the sample collected by buccal cell
26 collection kit.

27 Sec. 6. Section 29-4109, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 29-4109 (1) A person whose DNA record has been included in the
30 State DNA Data Base pursuant to the DNA Identification Information Act
31 may request expungement on the grounds that: the

1 (a) The conviction on which the authority for including such
2 person's DNA record was based has been reversed and the case dismissed;
3 or -

4 (b) The charge on which the authority for including such person's
5 DNA record was based has been dismissed.

6 (2) The Nebraska State Patrol shall purge all DNA records and
7 identifiable information in the data base pertaining to the person and
8 destroy all DNA samples from the person upon receipt of a written request
9 for expungement pursuant to this section and a certified copy of the
10 final court order reversing and dismissing the conviction or dismissing
11 the charge.

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

18 Sec. 7. This act becomes operative on January 1, 2022.

19 Sec. 8. Original sections 29-4102, 29-4103, 29-4104, 29-4106,
20 29-4106.01, and 29-4109, Reissue Revised Statutes of Nebraska, are
21 repealed.