

AMENDMENTS TO LB496

(Amendments to Standing Committee amendments, AM1054)

Introduced by Hunt, 8.

1           1. Strike amendment 1 and insert the following new amendment:

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

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

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

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

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

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

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

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

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

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

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

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

31 Sec. 3. Section 29-4104, Reissue Revised Statutes of Nebraska, is

1 amended to read:

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

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

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

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

17 ~~(4) Missing persons, relatives of missing persons, and unidentified~~  
18 ~~human remains.~~

19 Sec. 4. Section 29-4105, Reissue Revised Statutes of Nebraska, is  
20 amended to read:

21 29-4105 (1) The Nebraska State Patrol shall prescribe procedures to  
22 be used in the collection, submission, identification, analysis, storage,  
23 and disposition of DNA samples in the State DNA Sample Bank and DNA  
24 records in the State DNA Data Base. These procedures shall include  
25 quality assurance guidelines for laboratories which submit DNA records to  
26 the State DNA Data Base and shall also require that all laboratories be  
27 accredited by the American Society of Crime Laboratory Directors-LAB-  
28 Laboratory Accreditation Board or the National Forensic Science  
29 Technology Center or by any other national accrediting body or public  
30 agency which has requirements that are substantially equivalent to or  
31 more comprehensive than those of the society or center. The State DNA

1 Data Base shall be compatible with the procedures specified by the  
2 Federal Bureau of Investigation, including the use of comparable test  
3 procedures, laboratory equipment, supplies, and computer software. The  
4 DNA records shall be securely stored in the State DNA Data Base and  
5 retained in a manner consistent with the procedures established by the  
6 Federal Bureau of Investigation.

7 (2) The Nebraska State Patrol may contract with the University of  
8 Nebraska Medical Center to establish the State DNA Sample Bank at the  
9 medical center and for DNA typing tests. The State DNA Sample Bank shall  
10 serve as the repository of DNA samples collected under the DNA  
11 Identification Information Act and other forensic casework. Any such  
12 contract shall require that the University of Nebraska Medical Center be  
13 subject to the same restrictions and requirements of the act, insofar as  
14 applicable, as the Nebraska State Patrol, as well as any additional  
15 restrictions imposed by the patrol.

16 (3) The DNA samples and DNA records shall only be used by the  
17 Nebraska State Patrol (a) to create a separate population data base  
18 comprised of DNA records obtained after all personal identification is  
19 removed and (b) for quality assurance, training, and research purposes  
20 related to human DNA identification. The patrol may share or disseminate  
21 the population data base with other law enforcement agencies or forensic  
22 DNA laboratories which assist the patrol with statistical data bases. The  
23 population data base may be made available to and searched by other  
24 agencies participating in the Combined DNA Index System.

25 ~~(4) Except for records and samples expunged under section 29-4109,~~  
26 ~~the Nebraska State Patrol shall permanently retain DNA samples and~~  
27 ~~records of an individual obtained under section 29-4106. Any other DNA~~  
28 ~~samples and records related to forensic casework, other than those used~~  
29 ~~for research or quality control, shall not be permanently retained but~~  
30 ~~shall be retained only as long as needed for a criminal investigation or~~  
31 ~~criminal prosecution.~~

1           ~~(5) If the Nebraska State Patrol determines after analysis that a~~  
2 ~~forensic sample has been submitted by an individual who has been~~  
3 ~~eliminated as a suspect in a crime, the patrol or the law enforcement~~  
4 ~~agency which submitted the sample shall destroy the DNA sample and record~~  
5 ~~in the presence of a witness. After destruction, the patrol or law~~  
6 ~~enforcement agency shall make and keep a written record of the~~  
7 ~~destruction, signed by the individual who witnessed the destruction.~~  
8 ~~After the patrol or the law enforcement agency destroys the DNA sample~~  
9 ~~and record, it shall notify the individual if he or she is not a minor or~~  
10 ~~the parent or legal guardian of a minor by certified mail that the sample~~  
11 ~~and record have been destroyed. Destruction of a DNA sample and record~~  
12 ~~under this section shall not be considered the offense of tampering with~~  
13 ~~physical evidence under section 28-922.~~

14           Sec. 5. Section 29-4106, Reissue Revised Statutes of Nebraska, is  
15 amended to read:

16           29-4106 (1) Except as provided in subsection (2) of this section,  
17 beginning July 1, 2022, any resident of Nebraska shall, within thirty  
18 days after reaching nineteen years of age, report to a law enforcement  
19 facility in such resident's county or municipality and have a DNA sample  
20 collected. A person who is convicted of a felony offense or other  
21 specified offense on or after July 15, 2010, who does not have a DNA  
22 sample available for use in the State DNA Sample Bank, shall, at his or  
23 her own expense, have a DNA sample collected:

24           (2)(a) Residents of Nebraska who are already nineteen years of age  
25 before July 1, 2022, shall report to a law enforcement facility in such  
26 resident's county or municipality and have a DNA sample collected  
27 according to the implementation schedule set forth in this subsection.

28           (b) On or before July 1, 2022, the Nebraska State Patrol shall  
29 create a schedule to obtain DNA samples of all Nebraska residents  
30 described in this subsection. The implementation schedule shall require  
31 that all such residents have a DNA sample collected by July 1, 2027.

1        (c) This subsection does not apply to a person who already has a DNA  
2 sample available for use in the State DNA Sample Bank.

3        (3) DNA samples collected under this section shall be collected at  
4 the state's expense.

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

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

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

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

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

1 ~~been collected.~~

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

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

9 Sec. 6. Section 29-4108, Revised Statutes Cumulative Supplement,  
10 2020, is amended to read:

11 29-4108 (1) All DNA samples and DNA records submitted to the State  
12 DNA Sample Bank or the State DNA Data Base are confidential except as  
13 otherwise provided in the DNA Identification Information Act. The  
14 Nebraska State Patrol shall make DNA records in the State DNA Data Base  
15 available:

16 (a) To law enforcement agencies and forensic DNA laboratories which  
17 serve such agencies and which participate in the Combined DNA Index  
18 System; and

19 (b) Upon written or electronic request and in furtherance of an  
20 official investigation of a criminal offense or offender or suspected  
21 offender.

22 (2) The Nebraska State Patrol shall adopt and promulgate rules and  
23 regulations governing the methods of obtaining information from the State  
24 DNA Data Base and the Combined DNA Index System and procedures for  
25 verification of the identity and authority of the requester.

26 (3) The Nebraska State Patrol may, for good cause shown, revoke or  
27 suspend the right of a forensic DNA laboratory in this state to have  
28 access to or submit records to the State DNA Data Base.

29 ~~(4) For purposes of this subsection, person means a law enforcement~~  
30 ~~agency, the Federal Bureau of Investigation, any forensic DNA laboratory,~~  
31 ~~or person. No records or DNA samples shall be provided to any person~~

1 ~~unless such person enters into a written agreement with the Nebraska~~  
2 ~~State Patrol to comply with the provisions of section 29-4109 relative to~~  
3 ~~expungement, when notified by the Nebraska State Patrol that expungement~~  
4 ~~has been granted. Every person shall comply with the provisions of~~  
5 ~~section 29-4109 within ten calendar days of receipt of such notice and~~  
6 ~~certify in writing to the Nebraska State Patrol that such compliance has~~  
7 ~~been effectuated. The Nebraska State Patrol shall provide notice of such~~  
8 ~~certification to the person who was granted expungement.~~

9       Sec. 7. Original sections 29-4102, 29-4103, 29-4104, 29-4105, and  
10 29-4106, Reissue Revised Statutes of Nebraska, and section 29-4108,  
11 Revised Statutes Cumulative Supplement, 2020, are repealed.

12       Sec. 8. The following sections are outright repealed: Sections  
13 29-4109 and 29-4113, Reissue Revised Statutes of Nebraska.