

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 496

Introduced by Hilkeemann, 4.

Read first time January 19, 2021

Committee: Judiciary

1 A BILL FOR AN ACT relating to the DNA Identification Information Act; to
2 amend sections 29-4102, 29-4103, 29-4104, 29-4106, 29-4106.01, and
3 29-4109, Reissue Revised Statutes of Nebraska; to require collection
4 of DNA samples from persons arrested for crimes of violence; to
5 define a term; to provide for expungement; to harmonize provisions;
6 to provide an operative date; and to repeal the original sections.

7 Be it enacted by the people of the State of Nebraska,

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

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

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

21 29-4103 For purposes of the DNA Identification Information Act:

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

26 (2) Crime of violence means any of the following offenses when
27 charged as a felony:

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

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

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

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

- 1 (e) Manslaughter pursuant to section 28-305;
- 2 (f) Murder in the first degree pursuant to section 28-303;
- 3 (g) Murder in the second degree pursuant to section 28-304;
- 4 (h) Sexual assault in the first degree pursuant to section 28-319;
- 5 (i) Sexual assault of a child in the first degree pursuant to
6 section 28-319.01;
- 7 (j) Sexual assault in the second degree pursuant to section 28-320;
- 8 (k) Sexual assault of a child in the second or third degree pursuant
9 to section 28-320.01;
- 10 (l) Child enticement by means of an electronic communication device
11 pursuant to section 28-320.02;
- 12 (m) Sexual abuse of an inmate or parolee in the first degree
13 pursuant to section 28-322.02;
- 14 (n) Sexual abuse of an inmate or parolee in the second degree
15 pursuant to section 28-322.03;
- 16 (o) Sexual abuse of a protected individual pursuant to section
17 28-322.04;
- 18 (p) Robbery pursuant to section 28-324;
- 19 (q) Violation of the Homicide of the Unborn Child Act pursuant to
20 sections 28-388 through 28-393;
- 21 (r) Burglary pursuant to section 28-507;
- 22 (s) Incest with a person who is under eighteen years of age pursuant
23 to section 28-703; or
- 24 (t) Any attempt or conspiracy to commit an offense listed in
25 subdivision (2)(a) through (s) of this section;
- 26 (3) ~~(2)~~ DNA means deoxyribonucleic acid which is located in the
27 cells and provides an individual's personal genetic blueprint. DNA
28 encodes genetic information that is the basis of human heredity and
29 forensic identification;
- 30 (4) ~~(3)~~ DNA record means the DNA identification information stored
31 in the State DNA Data Base or the Combined DNA Index System which is

1 derived from DNA typing test results;

2 ~~(5)~~ ~~(4)~~ DNA sample means a blood, tissue, or bodily fluid sample
3 provided by any person covered by the DNA Identification Information Act
4 for analysis or storage, or both;

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

8 ~~(7)~~ ~~(6)~~ Law enforcement agency includes a police department, a town
9 marshal, a county sheriff, and the Nebraska State Patrol;

10 ~~(8)~~ ~~(7)~~ Other specified offense means misdemeanor stalking pursuant
11 to sections 28-311.02 to 28-311.05 or false imprisonment in the second
12 degree pursuant to section 28-315 or an attempt, conspiracy, or
13 solicitation to commit stalking pursuant to sections 28-311.02 to
14 28-311.05, false imprisonment in the first degree pursuant to section
15 28-314, false imprisonment in the second degree pursuant to section
16 28-315, knowing and intentional sexual abuse of a vulnerable adult or
17 senior adult pursuant to subdivision (1)(c) of section 28-386, or a
18 violation of the Sex Offender Registration Act pursuant to section
19 29-4011; and

20 ~~(9)~~ ~~(8)~~ Released means any release, parole, furlough, work release,
21 prerelease, or release in any other manner from a prison, a jail, or any
22 other detention facility or institution.

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

25 29-4104 The State DNA Data Base is established. The Nebraska State
26 Patrol shall administer the State DNA Data Base and shall provide DNA
27 records to the Federal Bureau of Investigation for storage and
28 maintenance in the Combined DNA Index System. The patrol shall provide
29 for liaison with the Federal Bureau of Investigation and other law
30 enforcement agencies in regard to the state's participation in the
31 Combined DNA Index System. The State DNA Data Base shall store and

1 maintain DNA records related to:

2 (1) Forensic casework, including, but not limited to, forensic
3 casework relating to missing persons, relatives of missing persons, and
4 unidentified human remains;

5 (2) Convicted and arrested offenders required to provide a DNA
6 sample under the DNA Identification Information Act;

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

8 (4) Missing persons, relatives of missing persons, and unidentified
9 human remains.

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

12 29-4106 (1) A person who is convicted of a felony offense or other
13 specified offense on or after July 15, 2010, who does not have a DNA
14 sample available for use in the State DNA Sample Bank, shall, at his or
15 her own expense, have a DNA sample collected:

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

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

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

30 (ii) In all other counties, a person placed on probation shall have
31 such DNA sample collected by a probation officer at a probation office,

1 and a person not placed on probation who receives a penalty of a fine or
2 time served shall have such DNA sample collected by the county sheriff.
3 Such person shall not be released unless and until a DNA sample has been
4 collected.

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

13 (3) A person who is arrested for an alleged crime of violence on or
14 after the operative date of this act, who does not have a DNA sample
15 available for use in the State DNA Sample Bank, shall have a DNA sample
16 collected by a law enforcement official at the receiving criminal
17 detention facility during the booking process. If the first appearance of
18 such person in court for the alleged crime of violence is not due to
19 arrest but by a citation or summons, the court immediately shall order,
20 and a law enforcement officer shall take or cause to be taken, a DNA
21 sample of the person.

22 (4) ~~(3)~~ A person who is serving a term of probation and has a DNA
23 sample collected pursuant to this section shall pay all costs associated
24 with the collection of the DNA sample.

25 (5) ~~(4)~~ If the court waives the cost of taking a DNA sample for any
26 reason, a county jail or other county detention facility or institution
27 collecting the DNA sample shall not be held financially responsible for
28 the cost of the DNA sample kit.

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

31 29-4106.01 (1) A person required to submit a DNA sample pursuant to

1 subsection (1) or (2) of section 29-4106 shall be given the choice of
2 having the sample collected by a blood draw or a buccal cell collection
3 kit. Any person who collects a DNA sample pursuant to section 29-4106
4 shall honor the choice of collection method made by the person providing
5 the DNA sample. If the person required to submit the DNA sample does not
6 indicate a preference as to the method of collection, either method may
7 be used to collect the sample.

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

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

13 29-4109 (1) A person whose DNA record has been included in the
14 State DNA Data Base pursuant to the DNA Identification Information Act
15 may request expungement on the grounds that: the

16 (a) The person was not charged with a crime of violence for which
17 the person was arrested within one year after the arrest;

18 (b) All criminal charges filed as a result of an arrest for a crime
19 of violence were dismissed with prejudice;

20 (c) All criminal charges filed as a result of an arrest for a crime
21 of violence were dismissed without prejudice and any statute of
22 limitations has run;

23 (d) The person was acquitted of all criminal charges filed as a
24 result of the arrest for a crime of violence; or

25 (e) The conviction on which the authority for including such
26 person's DNA record was based has been reversed and the case dismissed.

27 (2) The Nebraska State Patrol shall purge all DNA records and
28 identifiable information in the data base pertaining to the person and
29 destroy all DNA samples from the person upon receipt of a written request
30 for expungement pursuant to this section and a certified copy of the
31 final court order reversing and dismissing the conviction or other

1 documentation described in subsection (3) of this section.

2 (3) On or before February 1, 2022, the Nebraska State Patrol shall
3 adopt and promulgate rules and regulations regarding acceptable
4 documentation a person may submit to request expungement under
5 subdivisions (1)(a) through (d) of this section.

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

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

13 Sec. 8. Original sections 29-4102, 29-4103, 29-4104, 29-4106,
14 29-4106.01, and 29-4109, Reissue Revised Statutes of Nebraska, are
15 repealed.