

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 405**

Introduced by Baker, 30.

Read first time January 13, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to the DNA Identification Information Act; to  
2 amend sections 29-4101, 29-4103, 29-4106, 29-4106.01, 29-4108, and  
3 29-4109, Reissue Revised Statutes of Nebraska; to redefine a term;  
4 to provide for the effect of mistakes in obtaining DNA samples, DNA  
5 records, or thumb or fingerprints on the validity of detentions,  
6 arrests, adjudications, and convictions; to provide civil and  
7 criminal immunity to law enforcement agencies for mistakes in  
8 submitting DNA records or samples; to provide for the collecting of  
9 additional DNA samples; to change provisions relating to  
10 confidentiality of DNA samples and records; to prohibit the use of  
11 DNA samples or records for research as prescribed; to harmonize  
12 provisions; and to repeal the original sections.  
13 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-4101, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 29-4101 Sections 29-4101 to 29-4115.01 and section 3 of this act  
4 shall be known and may be cited as the DNA Identification Information  
5 Act.

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

8 29-4103 For purposes of the DNA Identification Information Act:

9 (1) Combined DNA Index System or CODIS means the Federal Bureau of  
10 Investigation's national DNA identification index system that allows the  
11 storage and exchange of DNA records submitted by state and local forensic  
12 DNA laboratories;

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

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

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

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

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

28 (7) Other specified offense means misdemeanor stalking pursuant to  
29 sections 28-311.02 to 28-311.05 or false imprisonment in the second  
30 degree pursuant to section 28-315 or an attempt, conspiracy, or  
31 solicitation to commit stalking pursuant to sections 28-311.02 to

1 28-311.05, false imprisonment in the first degree pursuant to section  
2 28-314, false imprisonment in the second degree pursuant to section  
3 28-315, knowing and intentional sexual abuse of a vulnerable adult or  
4 senior adult pursuant to subdivision (1)(c) of section 28-386, or a  
5 violation of the Sex Offender Registration Act pursuant to section  
6 29-4011; and

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

10 Sec. 3. (1) The detention, arrest, adjudication, or conviction of a  
11 person based upon a DNA record, DNA sample, or thumb or fingerprint is  
12 not invalidated if it is determined that the DNA sample, DNA record, or  
13 thumb or fingerprint was obtained for inclusion in or was placed in the  
14 State DNA Data Base, Combined DNA Index System, or State DNA Sample Bank  
15 by mistake.

16 (2) A law enforcement agency or its employee that mistakenly submits  
17 a person's DNA record or DNA sample for inclusion in the State DNA Data  
18 Base, Combined DNA Index System, or State DNA Sample Bank or mistakenly  
19 confirms that a person's DNA record or DNA sample qualifies for such  
20 inclusion:

21 (a) Shall not be criminally liable for such mistake if the  
22 submission or confirmation was done in good faith; and

23 (b) Shall not be civilly liable for such mistake so long as the  
24 submission or confirmation was not the result of intentional misconduct,  
25 gross negligence, or reckless conduct.

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

28 29-4106 (1) A person who is convicted of a felony offense or other  
29 specified offense on or after July 15, 2010, who does not have a DNA  
30 sample available for use in the State DNA Sample Bank, shall, at his or  
31 her own expense, have a DNA sample collected:

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

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

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

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

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

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

1           (4) If the DNA sample collected pursuant to this section is of poor  
2 quality or insufficient quantity such that a useable DNA profile cannot  
3 be obtained, the person shall submit to collection of an additional DNA  
4 sample or samples as necessary to obtain a useable DNA profile. Such  
5 additional samples shall be collected as otherwise provided in this  
6 section, except that the person shall not be required to pay any costs  
7 associated with the collection of the additional samples.

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

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

14           29-4106.01   (1) Except as provided in subsection (2) of this  
15 section, a A person required to submit a DNA sample pursuant to section  
16 29-4106 shall be given the choice of having the sample collected by a  
17 blood draw or a buccal cell collection kit, and any ~~Any~~ person who  
18 collects such a DNA sample ~~pursuant to section 29-4106~~ shall honor the  
19 choice of collection method made by the person providing the DNA sample.  
20 If the person required to submit the DNA sample does not indicate a  
21 preference as to the method of collection, either method may be used to  
22 collect the sample.

23           (2) When it is necessary to draw an additional sample under  
24 subsection (4) of section 29-4106, the choice of collection method shall  
25 be made by the Nebraska State Patrol.

26           Sec. 6. Section 29-4108, Reissue Revised Statutes of Nebraska, is  
27 amended to read:

28           29-4108 (1) All DNA samples and DNA records submitted to the State  
29 DNA Sample Bank or the State DNA Data Base are confidential except as  
30 otherwise provided in the DNA Identification Information Act. The  
31 Nebraska State Patrol shall make DNA records in the State DNA Data Base

1 available:

2 (a) To law enforcement agencies and ~~CODIS-participating forensic DNA~~  
3 laboratories which serve such agencies; and

4 (b) Upon written or electronic request and in furtherance of an  
5 official investigation of a criminal offense or offender or suspected  
6 offender.

7 (2) DNA analysis under the DNA Identification Information Act is  
8 limited to analysis for law enforcement identification markers. Any  
9 analysis to derive information regarding medical disease or genetic  
10 predisposition to disease is prohibited.

11 (3) (2) The Nebraska State Patrol shall adopt and promulgate rules  
12 and regulations governing the methods of obtaining information from the  
13 State DNA Data Base and the Combined DNA Index System and procedures for  
14 verification of the identity and authority of the requester.

15 (4) (3) The Nebraska State Patrol may, for good cause shown, revoke  
16 or suspend the right of a forensic DNA laboratory in this state to have  
17 access to or submit records to the State DNA Data Base.

18 (5) (4) For purposes of this subsection, person means a law  
19 enforcement agency, the Federal Bureau of Investigation, any forensic DNA  
20 laboratory, or person. No records or DNA samples shall be provided to any  
21 person unless such person enters into a written agreement with the  
22 Nebraska State Patrol to comply with the provisions of section 29-4109  
23 relative to expungement, when notified by the Nebraska State Patrol that  
24 expungement has been granted. Every person shall comply with the  
25 provisions of section 29-4109 within ten calendar days of receipt of such  
26 notice and certify in writing to the Nebraska State Patrol that such  
27 compliance has been effectuated. The Nebraska State Patrol shall provide  
28 notice of such certification to the person who was granted expungement.

29 Sec. 7. Section 29-4109, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31 29-4109 A person whose DNA record has been included in the State DNA

1 Data Base pursuant to the DNA Identification Information Act may request  
2 expungement on the grounds that the conviction on which the authority for  
3 including such person's DNA record was based has been reversed and the  
4 case dismissed. The Nebraska State Patrol shall purge all DNA records and  
5 identifiable information in the data base pertaining to the person and  
6 destroy all DNA samples from the person upon receipt of a written request  
7 for expungement pursuant to this section and a certified copy of the  
8 final court order reversing and dismissing the conviction.

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

15       Sec. 8. Original sections 29-4101, 29-4103, 29-4106, 29-4106.01,  
16 29-4108, and 29-4109, Reissue Revised Statutes of Nebraska, are repealed.