

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 385**

FINAL READING

Introduced by Johnson, 37; Price, 26

Read first time January 12, 2005

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to amend sections  
2 29-2262, 29-4101, 29-4102, 29-4103, 29-4104, 29-4105,  
3 29-4106, 29-4107, 29-4108, 29-4109, 29-4112, 29-4113,  
4 29-4114, and 29-4115, Revised Statutes Cumulative  
5 Supplement, 2004; to provide a condition of probation;  
6 to rename and change provisions of the DNA Detection  
7 of Sexual and Violent Offenders Act; to harmonize  
8 provisions; and to repeal the original sections.  
9 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 29-2262, Revised Statutes Cumulative  
2 Supplement, 2004, is amended to read:

3           29-2262 (1) When a court sentences an offender to  
4 probation, it shall attach such reasonable conditions as it deems  
5 necessary or likely to insure that the offender will lead a  
6 law-abiding life. No offender shall be sentenced to probation if  
7 he or she is deemed to be a habitual criminal pursuant to section  
8 29-2221.

9           (2) The court may, as a condition of a sentence of  
10 probation, require the offender:

11           (a) To refrain from unlawful conduct;

12           (b) To be confined periodically in the county jail or to  
13 return to custody after specified hours but not to exceed (i) for  
14 misdemeanors, the lesser of ninety days or the maximum jail term  
15 provided by law for the offense and (ii) for felonies, one hundred  
16 eighty days;

17           (c) To meet his or her family responsibilities;

18           (d) To devote himself or herself to a specific employment  
19 or occupation;

20           (e) To undergo medical or psychiatric treatment and to  
21 enter and remain in a specified institution for such purpose;

22           (f) To pursue a prescribed secular course of study or  
23 vocational training;

24           (g) To attend or reside in a facility established for the  
25 instruction, recreation, or residence of persons on probation;

1           (h) To refrain from frequenting unlawful or disreputable  
2 places or consorting with disreputable persons;

3           (i) To possess no firearm or other dangerous weapon if  
4 convicted of a felony, or if convicted of any other offense, to  
5 possess no firearm or other dangerous weapon unless granted written  
6 permission by the court;

7           (j) To remain within the jurisdiction of the court and  
8 to notify the court or the probation officer of any change in his  
9 or her address or his or her employment and to agree to waive  
10 extradition if found in another jurisdiction;

11           (k) To report as directed to the court or a probation  
12 officer and to permit the officer to visit his or her home;

13           (l) To pay a fine in one or more payments as ordered;

14           (m) To pay for tests to determine the presence of drugs  
15 or alcohol, psychological evaluations, offender assessment screens,  
16 and rehabilitative services required in the identification,  
17 evaluation, and treatment of offenders if such offender has the  
18 financial ability to pay for such services;

19           (n) To perform community service as outlined in sections  
20 29-2277 to 29-2279 under the direction of his or her probation  
21 officer;

22           (o) To be monitored by an electronic surveillance device  
23 or system and to pay the cost of such device or system if the  
24 offender has the financial ability;

25           (p) To participate in a community correctional facility

1 or program as provided in the Community Corrections Act;

2 (q) To successfully complete an incarceration work camp  
3 program as determined by the Department of Correctional Services;

4 (r) To satisfy any other conditions reasonably related to  
5 the rehabilitation of the offender;

6 (s) To make restitution as described in sections 29-2280  
7 and 29-2281; or

8 (t) To pay for all costs imposed by the court, including  
9 court costs and the fees imposed pursuant to section 29-2262.06.

10 (3) In all cases in which the offender is guilty  
11 of violating section 28-416, a condition of probation shall be  
12 mandatory treatment and counseling as provided by such section.

13 (4) In all cases in which the offender is guilty of  
14 a crime covered by the DNA Identification Information Act, a  
15 condition of probation shall be the collecting of a DNA sample  
16 pursuant to the act prior to release on probation.

17 Sec. 2. Section 29-4101, Revised Statutes Cumulative  
18 Supplement, 2004, is amended to read:

19 29-4101 Sections 29-4101 to 29-4115 shall be known and  
20 may be cited as the DNA Detection of Sexual and Violent Offenders  
21 Identification Information Act.

22 Sec. 3. Section 29-4102, Revised Statutes Cumulative  
23 Supplement, 2004, is amended to read:

24 29-4102 The Legislature finds that DNA data banks are  
25 an important tool in criminal investigations, in the exclusion

1 of individuals who are the subject of criminal investigations or  
2 prosecutions, ~~and~~ in deterring and detecting recidivist acts, and  
3 in locating and identifying missing persons and human remains.  
4 Several states have enacted laws requiring persons convicted  
5 of certain crimes, especially sex offenses, to provide genetic  
6 samples for DNA typing tests. Moreover, it is the policy of  
7 this state to assist federal, state, and local criminal justice  
8 and law enforcement agencies in the identification and detection  
9 of individuals in criminal investigations and in locating and  
10 identifying missing persons and human remains. It is in the best  
11 interest of this state to establish a State DNA Data Base for  
12 DNA records and a State DNA Sample Bank as a repository for DNA  
13 samples from individuals convicted of felony sex offenses and other  
14 specified offenses and from individuals for purposes of assisting  
15 in locating and identifying missing persons and human remains.

16           Sec. 4. Section 29-4103, Revised Statutes Cumulative  
17 Supplement, 2004, is amended to read:

18           29-4103 For purposes of the DNA ~~Detection of Sexual and~~  
19 ~~Violent Offenders~~ Identification Information Act:

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

24           (2) DNA means deoxyribonucleic acid which is located in  
25 the cells and provides an individual's personal genetic blueprint.

1 DNA encodes genetic information that is the basis of human heredity  
2 and forensic identification;

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

6 (4) DNA sample means a blood, tissue, or bodily fluid  
7 ~~or tissue~~ sample provided by any person with respect to offenses  
8 covered by the DNA Detection of Sexual and Violent Offenders  
9 Identification Information Act for analysis or storage, or both;

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

13 (6) Felony sex offense means a felony offense, or an  
14 attempt, conspiracy, or solicitation to commit a felony offense,  
15 under any of the following:

16 (a) Kidnapping of a minor pursuant to section 28-313,  
17 except when the person is the parent of the minor and was not  
18 convicted of any other offense in this subdivision;

19 (b) Incest of a minor pursuant to section 28-703;

20 (c) Sexual assault in the first or second degree pursuant  
21 to section 28-319 or 28-320;

22 (d) Sexual assault of a child pursuant to section  
23 28-320.01;

24 (e) Sexual assault of a vulnerable adult pursuant to  
25 subdivision (1)(c) of section 28-386; and

1 (f) False imprisonment of a minor in the first degree  
2 pursuant to section 28-314, except when the person is the parent  
3 of the minor and was not convicted of any other offense in this  
4 subdivision;

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

7 (8) Other specified offense means an offense, or an  
8 attempt, conspiracy, or solicitation to commit an offense, under  
9 any of the following:

10 (a) Murder in the first degree pursuant to section  
11 28-303;

12 (b) Murder in the second degree pursuant to section  
13 28-304;

14 (c) Manslaughter pursuant to section 28-305; ~~ex~~

15 (d) Stalking pursuant to sections 28-311.02 to 28-311.05;

16 ~~and~~

17 (e) Burglary pursuant to section 28-507 provided that the  
18 real estate is a dwelling place intended for human occupancy; or

19 (f) Robbery pursuant to section 28-324; and

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

23 Sec. 5. Section 29-4104, Revised Statutes Cumulative  
24 Supplement, 2004, is amended to read:

25 29-4104 The State DNA Data Base is established. The

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

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

11 (2) Convicted offenders required to provide a DNA  
12 sample under the DNA Detection of Sexual and Violent Offenders  
13 Identification Information Act; and

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

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

18 Sec. 6. Section 29-4105, Revised Statutes Cumulative  
19 Supplement, 2004, is amended to read:

20 29-4105 (1) The Nebraska State Patrol shall prescribe  
21 procedures to be used in the collection, submission,  
22 identification, analysis, storage, and disposition of DNA  
23 samples in the State DNA Sample Bank and DNA records ~~under the DNA~~  
24 ~~Detection of Sexual and Violent Offenders Act~~ in the State DNA Data  
25 Base. These procedures shall include quality assurance guidelines

1 for laboratories which submit DNA records to the State DNA Data  
2 Base and shall also require that all laboratories be accredited by  
3 the American Society of Crime Laboratory Directors-LAB-Laboratory  
4 Accreditation Board or the National Forensic Science Technology  
5 Center or by any other national accrediting body or public agency  
6 which has requirements that are substantially equivalent to or more  
7 comprehensive than those of the society or center. The State DNA  
8 Data Base shall be compatible with the procedures specified by the  
9 Federal Bureau of Investigation, including the use of comparable  
10 test procedures, laboratory equipment, supplies, and computer  
11 software. The DNA records shall be securely stored in the State DNA  
12 Data Base and retained in a manner consistent with the procedures  
13 established by the Federal Bureau of Investigation.

14 (2) The Nebraska State Patrol may contract with the  
15 University of Nebraska Medical Center to establish the State DNA  
16 Sample Bank at the medical center and for DNA typing tests. The  
17 State DNA Sample Bank shall serve as the repository of DNA samples  
18 collected under the act. The DNA Identification Information Act and  
19 other forensic casework. Any such contract shall require that the  
20 University of Nebraska Medical Center in contracting under the act  
21 is be subject to the same restrictions and requirements of the act,  
22 insofar as applicable, as the Nebraska State Patrol, as well as any  
23 additional restrictions imposed by the patrol.

24 (3) The DNA samples and DNA records shall only be  
25 used by the Nebraska State Patrol (a) to create a separate

1 population data base comprised of DNA records obtained ~~under~~  
2 ~~the act~~ after all personal identification is removed and (b)  
3 for quality assurance, training, and research purposes related  
4 to human DNA identification. The patrol may share or disseminate  
5 the population data base with other law enforcement agencies or  
6 forensic DNA laboratories which assist the patrol with statistical  
7 data bases. The population data base may be made available to and  
8 searched by other agencies participating in the Combined DNA Index  
9 System.

10 (4) Except for records and samples expunged under section  
11 29-4109, the Nebraska State Patrol shall permanently retain DNA  
12 samples and records of an individual obtained under section  
13 29-4106. Any other DNA samples and records related to forensic  
14 casework, other than those used for research or quality control,  
15 shall not be permanently retained but shall be retained only  
16 as long as needed for a criminal investigation or criminal  
17 prosecution.

18 (5) If the Nebraska State Patrol determines after  
19 analysis that a forensic sample has been submitted by an individual  
20 who has been eliminated as a suspect in a crime, the patrol  
21 or the law enforcement agency which submitted the sample shall  
22 destroy the DNA sample and record in the presence of a witness.  
23 After destruction, the patrol or law enforcement agency shall  
24 make and keep a written record of the destruction, signed by the  
25 individual who witnessed the destruction. After the patrol or the

1 law enforcement agency destroys the DNA sample and record, it shall  
2 notify the individual if he or she is not a minor or the parent or  
3 legal guardian of a minor by certified mail that the sample and  
4 record have been destroyed. Destruction of a DNA sample and record  
5 under this section shall not be considered the offense of tampering  
6 with physical evidence under section 28-922.

7           Sec. 7. Section 29-4106, Revised Statutes Cumulative  
8 Supplement, 2004, is amended to read:

9           29-4106 (1) A person who is convicted of a felony sex  
10 offense or other specified offense on or after ~~September 13, 1997~~  
11 the effective date of this act, who does not have a DNA sample  
12 available for use in the State DNA Sample Bank, shall have a DNA  
13 sample ~~drawn~~ collected:

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

21           (b) As a condition for any sentence which will not  
22 involve an intake into a prison, jail, or other detention facility  
23 or institution. Such DNA samples shall be ~~drawn~~ collected at a  
24 detention facility or institution as specified by the court. Such  
25 person shall not be released unless and until a DNA sample has been

1 ~~drawn~~ collected.

2 (2) A person who has been convicted of a felony sex  
3 offense or other specified offense before ~~September 13, 1997~~ the  
4 effective date of this act, who does not have a DNA sample  
5 available for use in the State DNA Sample Bank, and who is still  
6 serving a term of confinement for such offense on ~~September 13,~~  
7 ~~1997~~ the effective date of this act, shall not be released prior to  
8 the expiration of his or her maximum term of confinement unless and  
9 until a DNA sample has been ~~drawn~~ collected.

10 Sec. 8. Section 29-4107, Revised Statutes Cumulative  
11 Supplement, 2004, is amended to read:

12 29-4107 (1) Only individuals (a) who are physicians or  
13 registered nurses, (b) who are trained to withdraw human blood for  
14 scientific or medical purposes and are obtaining blood specimens  
15 while working under orders of or protocols and procedures approved  
16 by a physician, registered nurse, or other independent health care  
17 practitioner licensed to practice by the state if the scope of  
18 practice of that practitioner permits the practitioner to obtain  
19 blood specimens, or (c) who are both employed by a licensed  
20 institution or facility and have been trained to withdraw human  
21 blood for scientific or medical purposes shall ~~draw~~ withdraw blood  
22 for a DNA sample under the DNA Detection of Sexual and Violent  
23 Offenders Identification Information Act.

24 (2) In addition to the DNA sample, one thumb print or  
25 fingerprint shall be taken from the person from whom the DNA sample

1 is being ~~drawn~~ collected for the exclusive purpose of verifying  
2 the identity of such person. The DNA sample and the thumb print or  
3 fingerprint shall be delivered to the Nebraska State Patrol within  
4 five working days after ~~drawing~~ collecting the sample.

5 ~~(2)~~ (3) A person authorized to ~~draw~~ collect DNA samples  
6 under ~~this section~~ the act is not criminally liable for ~~drawing~~  
7 collecting a DNA sample and transmitting DNA records pursuant to  
8 the act if he or she performs these activities in good faith and is  
9 not civilly liable for such activities if he or she performed such  
10 activities in a reasonable manner according to generally accepted  
11 medical and other professional practices.

12 Sec. 9. Section 29-4108, Revised Statutes Cumulative  
13 Supplement, 2004, is amended to read:

14 29-4108 (1) All DNA samples and DNA records submitted  
15 ~~pursuant to the DNA Detection of Sexual and Violent Offenders~~  
16 ~~Act~~ to the State DNA Sample Bank or the State DNA Data Base  
17 are confidential except as otherwise provided in the ~~act~~ DNA  
18 Identification Information Act. The Nebraska State Patrol shall  
19 make DNA records in the State DNA Data Base available:

20 (a) To law enforcement agencies and forensic DNA  
21 laboratories which serve such agencies; and

22 (b) Upon written or electronic request and in furtherance  
23 of an official investigation of a criminal offense or offender or  
24 suspected offender.

25 (2) The Nebraska State Patrol shall adopt and promulgate

1 rules and regulations governing the methods of obtaining  
2 information from the State DNA Data Base and the Combined DNA  
3 Index System and procedures for verification of the identity and  
4 authority of the requester.

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

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

22 Sec. 10. Section 29-4109, Revised Statutes Cumulative  
23 Supplement, 2004, is amended to read:

24 29-4109 A person whose DNA record has been included  
25 in the State DNA Data Base pursuant to the DNA ~~Detection~~ of

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

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

17           Sec. 11. Section 29-4112, Revised Statutes Cumulative  
18 Supplement, 2004, is amended to read:

19           29-4112 The Nebraska State Patrol or any other aggrieved  
20 individual or agency may institute an action in a court of  
21 proper jurisdiction against any person, including law enforcement  
22 agencies, to enjoin such person or agency from violating the  
23 DNA ~~Detection of Sexual and Violent Offenders~~ Identification  
24 Information Act.

25           Sec. 12. Section 29-4113, Revised Statutes Cumulative

1 Supplement, 2004, is amended to read:

2           29-4113 The Nebraska State Patrol may recommend to  
3 the Legislature that the Legislature enact legislation for the  
4 inclusion of additional offenses for which DNA samples shall be  
5 ~~taken~~ collected and otherwise subjected to the DNA ~~Detection of~~  
6 ~~Sexual and Violent Offenders~~ Identification Information Act. In  
7 determining whether to recommend additional offenses, the Nebraska  
8 State Patrol shall consider those offenses for which DNA testing  
9 will have a substantial impact on the detection and identification  
10 of sexual offenders and violent offenders.

11           Sec. 13. Section 29-4114, Revised Statutes Cumulative  
12 Supplement, 2004, is amended to read:

13           29-4114 The Nebraska State Patrol shall adopt and  
14 promulgate rules and regulations to carry out the DNA ~~Detection of~~  
15 ~~Sexual and Violent Offenders~~ Identification Information Act.

16           Sec. 14. Section 29-4115, Revised Statutes Cumulative  
17 Supplement, 2004, is amended to read:

18           29-4115 Except as provided in section 29-4105, the  
19 DNA ~~Detection of Sexual and Violent Offenders~~ Identification  
20 Information Act shall not limit or abrogate any existing authority  
21 of peace officers to ~~take collect~~, maintain, store, and utilize DNA  
22 samples for law enforcement purposes.

23           Sec. 15. Original sections 29-2262, 29-4101, 29-4102,  
24 29-4103, 29-4104, 29-4105, 29-4106, 29-4107, 29-4108, 29-4109,  
25 29-4112, 29-4113, 29-4114, and 29-4115, Revised Statutes Cumulative

LB 385

LB 385

1 Supplement, 2004, are repealed.